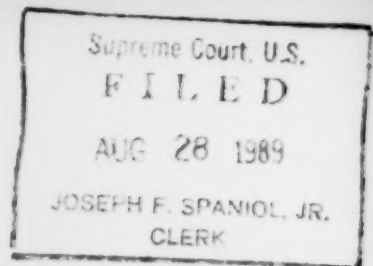


89-982



NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

EDWARD P. SINDAK, Petitioner

v.

STATE OF IDAHO, Respondent

ON PETITION FROM THE SUPREME COURT OF IDAHO

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

STEPHEN L. BEER
BEER & CAIN
302 West Idaho Street
Boise, Idaho 83702-6039
Telephone: (208) 336-2323
Fax: (208) 336-9060

NO. 89-982

Supreme Court, U.S.

FILED

AUG 28 1989

JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

EDWARD P. SINDAK, Petitioner

v.

STATE OF IDAHO, Respondent

AFFIDAVIT OF SERVICE BY MAIL

STEPHEN L. BEER, Being first duly sworn
upon oath, deposes and states:

That he is a member of the Bar of the
United States Supreme Court, representing the
Petitioner on whose behalf service of the fore-
going documents has been made and hereby cer-
tifies that on the 13th day of December, 1989,
all parties have been served in compliance with
Supreme Court Rule 28, by depositing three (3)
copies of the foregoing document in the United
States Post Office, postage prepaid, addressed
to counsel of record at the following address:

OFFICE OF THE ATTORNEY GENERAL
State of Idaho
Statehouse Mail
Boise, Idaho 83720.

Stephen L. Beer

STEPHEN L. BEER

STATE OF IDAHO)
 : ss
County of Ada)

SUBSCRIBED AND SWORN TO Before me this 13 day
of December, 1989.

151

Notary Public for Idaho
Residing at Boise, Idaho
Commission expires 3/18/94

QUESTION PRESENTED FOR REVIEW

Whether Idaho Code §18-1509 is unconstitutionally vague?

PARTIES INVOLVED (per Rule 21.1(b)1)

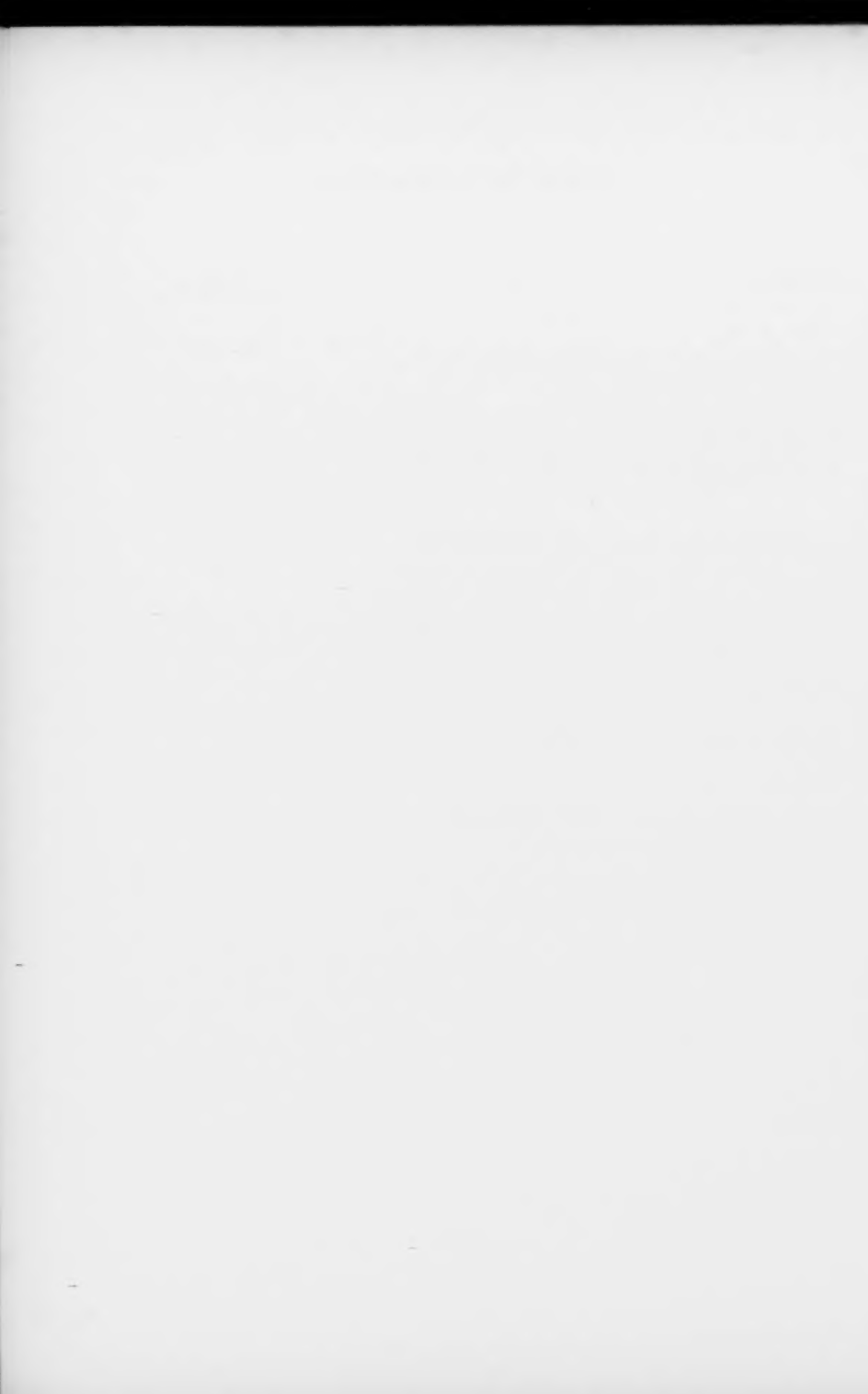
Petitioner, Edward P. Sindak, was the defendant in the District Court of Ada County, Idaho, appellant in the District Court of Ada County, appellant in the Idaho Court of Appeals, and respondent in the Idaho Supreme Court and petitioner in the Petition For Rehearing in the Idaho Supreme Court. Respondent, The State of Idaho was plaintiff in the District Court of Ada County, Idaho, appellee in the District Court of Ada County, and appellee in the Idaho Court of Appeals, appellee in the Supreme Court of Idaho and respondent in the Supreme Court of Idaho.

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ON PETITION FROM THE SUPREME COURT OF IDAHO

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

Petitioner, Edward P. Sindak, (hereafter defendant), prays that a writ of certiorari issue to review the appeals from the final judgment by the Idaho Supreme Court dated May 9, 1989. Defendant's Petition For Rehearing was denied by the Court on June 29, 1989. The Idaho Supreme Court held Idaho Code §18-1509 was not unconstitutional as being in contrast to the "void for vagueness" doctrine as enunciated by this court.



JUDGMENT, OPINION AND ORDER BELOW

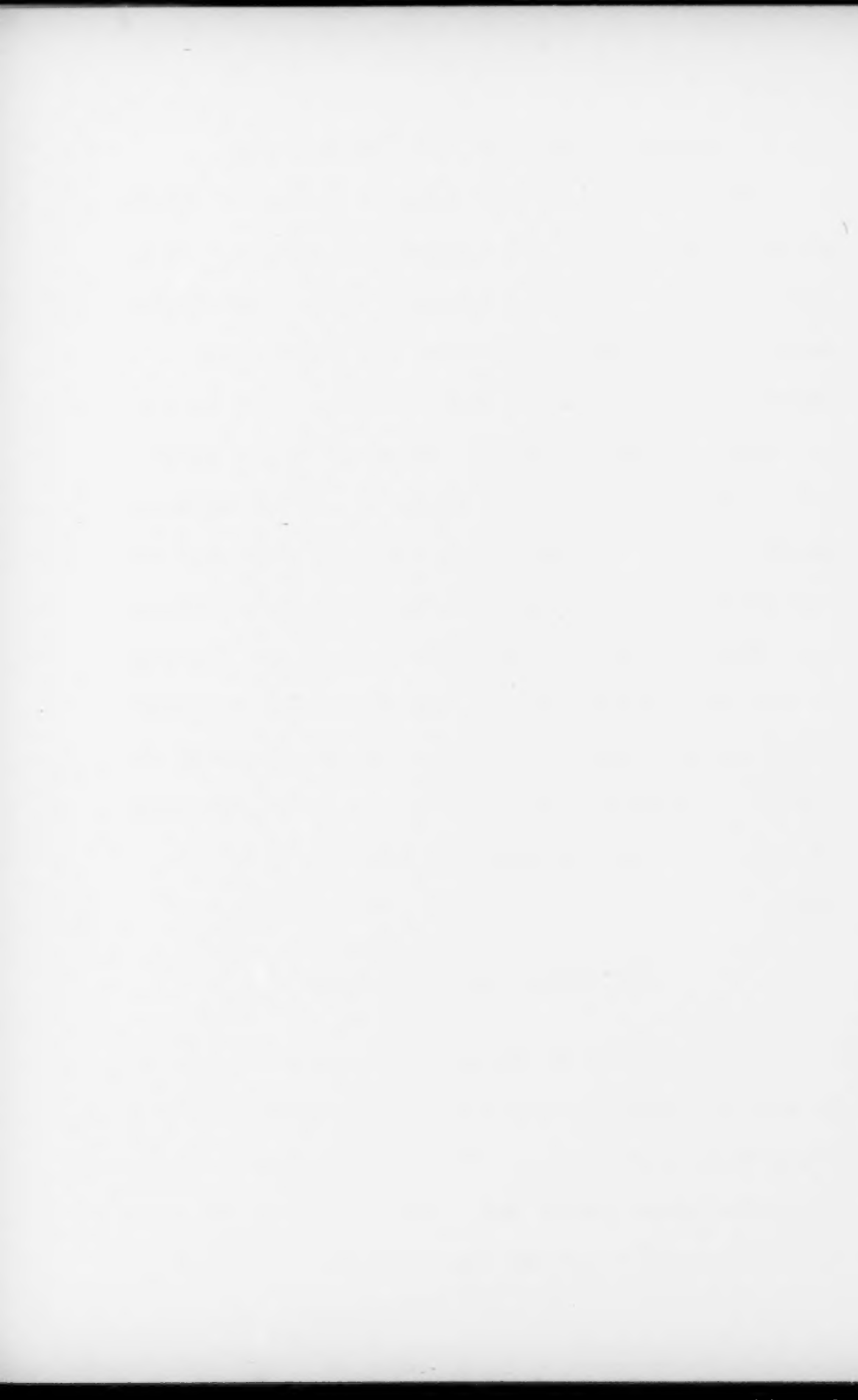
The opinion of the Supreme Court of Idaho which appears in the Appendix hereto, A-1, *infra*, is not reported at this time. The Order denying Appellant's Petition For Rehearing dated June 28, 1989 is not reported. It is reprinted in the Appendix hereto, A-2, *infra*.

The opinion of the Idaho Court of Appeals dated January 29, 1988, is not published but is reprinted in the Appendix hereto, A-3, *infra*.

The Memorandum Decision on appeal issued by the Honorable Alan M. Schwartzman, District Judge in and for the County of Ada, State of Idaho, on February 9, 1987 is not published but is reprinted in the Appendix hereto, A-4, *infra*.

JURISDICTIONAL STATEMENT

The Judgment of the Supreme Court of Idaho, on May 9, 1989, upheld the constitutionality of Idaho Code §18-1509 in the face of Appellant's constitutional challenge. The Petition For Rehearing was filed by the Appellant on May 30,



1989. The Idaho Supreme Court entertained and denied the Petition on June 29, 1989.

A Notice of Appeal to this Court was timely filed in the Supreme Court of Idaho on August 22, 1989.

This appeal is being docketed in this Court within sixty (60) days from the denial of rehearing below. Respondent, on August 28, 1986, mailed by means of the United States Postal Service forty copies of his Petition For Certiorari which were returned to Respondent on September 19, 1989. The requested changes were made herein and resubmitted.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTION OF THE UNITED STATES, AMENDMENT 14

§1. [Citizenship - Due Process of Law - Equal Protection.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.



No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person or life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 18, CHAPTER 15, IDAHO CODE

18-1509. Enticing of children.--

(1) A person shall be guilty of a misdemeanor if that person attempts to persuade, or persuades, whether by words or actions or both, a minor child under the age of sixteen (16) years to either:

- (a) Leave the child's home or school; or
- (b) Enter a vehicle or building; or
- (c) Enter a structure or enclosed area, or alley, with the intent that the child shall be concealed from public view; while the person is acting without the authority of (i) custodial parent of the child, (ii) the state of Idaho or a political subdivi-



sion thereof or (iii) one having legal custody of the minor child. Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of aid or assistance to a minor child.

(2) Every person who is convicted of a violation of the provisions of this section shall be punished by imprisonment in the county or municipal jail for not more than six (6) months or by a fine of not more than one thousand dollars (\$1,000) or by both such fine or imprisonment. A person convicted a second or subsequent time of violating the provisions of this section shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for a period of time of not more than five years.

HOW THE FEDERAL QUESTION WAS RAISED

Throughout all the proceedings below, Mr. Sindak asserted that his statutory right to a speedy trial was violated and that Idaho Code,



§18-1509 was constitutionally vague. Mr. Sindak raised his objection to the constitutionality of Idaho Code §18-1509 at the time of trial. (Transcript, p. 4, ll. 3-23, p. 64, ll. 12-23.) On appeal to the District Court, the Court upheld the statute's constitutionality. The Idaho Court of Appeals reversed the District Court's ruling on the speedy trial grounds. The Idaho Supreme Court, on a Petition for Review, reversed the Idaho Court of Appeals on the speedy trial question and adopted the District Court's opinion on the issue of constitutionality of the code section. Mr. Sindak's Petition For Rehearing was denied.

STATEMENT

This case involves the question whether Idaho Code which prohibits by criminal punishment the enticement of children without an intent requirement is unconstitutional when applying the "void for vagueness" doctrine.

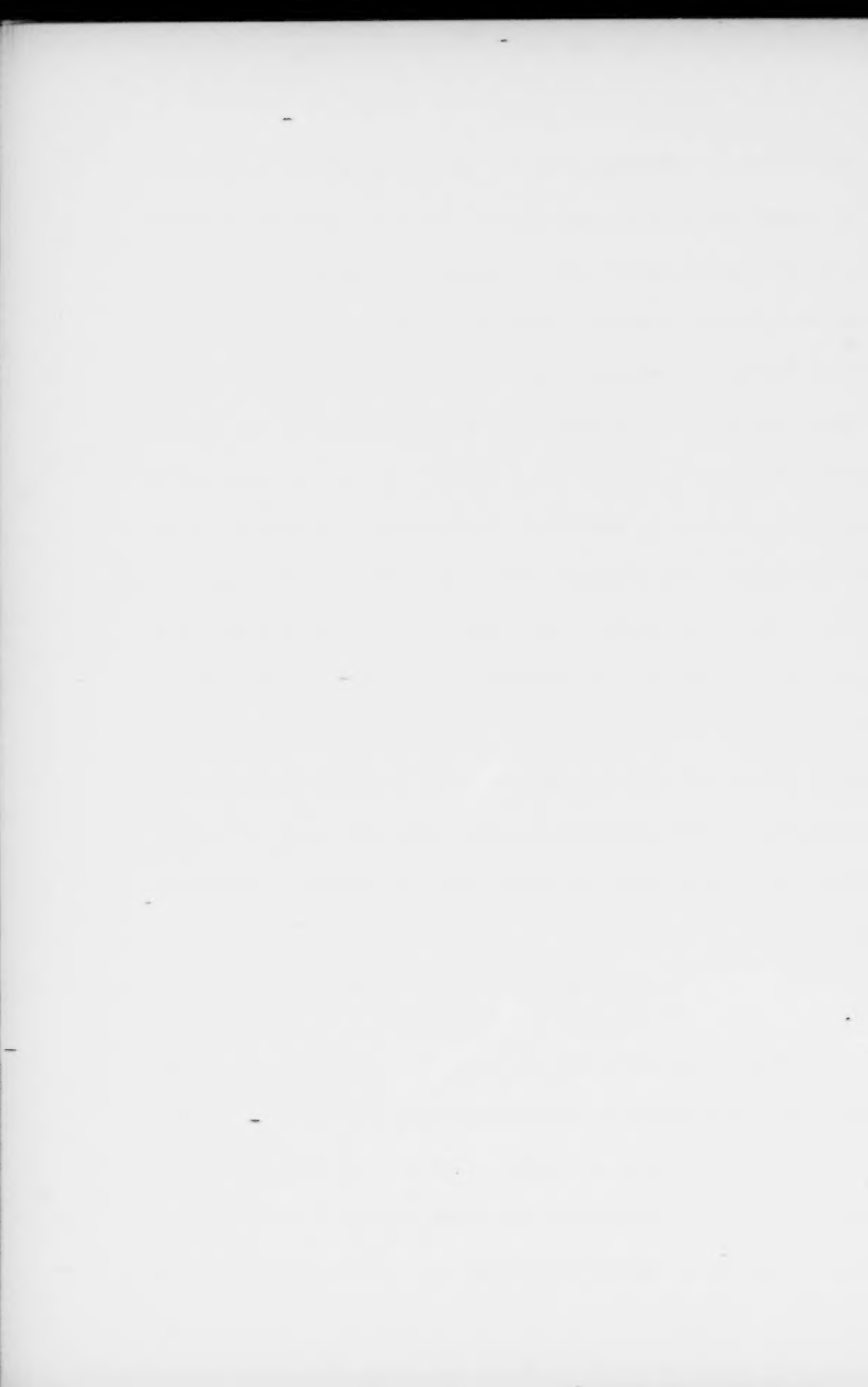
The instant suit arose when Mr. Sindak was originally charged on August 18, 1985, for



unlawfully attempting to get two minor children to come to his house close to midnight by knocking on a window of a home in which children were in and asking them to come out or over to his house to watch television and get paid for some yard work without the permission of their parents. On April 24, 1986, a trial was held on the State's Amended Complaint alleging that on August 18, 1985, Mr. Sindak attempted by words or actions, or both, to persuade one child, Jeremiah Bradshaw who was nine years old, to leave a travel trailer parked in the back yard of his home without permission of his parents. The State, on the day of trial, asked for and received permission to amend its Complaint.

SUBSTANTIAL QUESTION

The question as to the due process clause of the Fourteenth Amendment an accused's right is certainly not a novel issue for this Court, but it is a substantial one. This Court has had numerous opportunities to hear and refine



what protections are afforded an individual when he or she is accused of a crime. Kolendar vs. Lawson, 461 U.S. 352 (1983); Hoffman Estates vs. Flip Side, Hoffman Estates, Inc., 455 U.S. 489 (1982); Grayned vs. City of Rockford, 408 U.S. 104, 1972; Papachristou, et al. vs. City of Jacksonville, 405 U.S. 156 (1975).

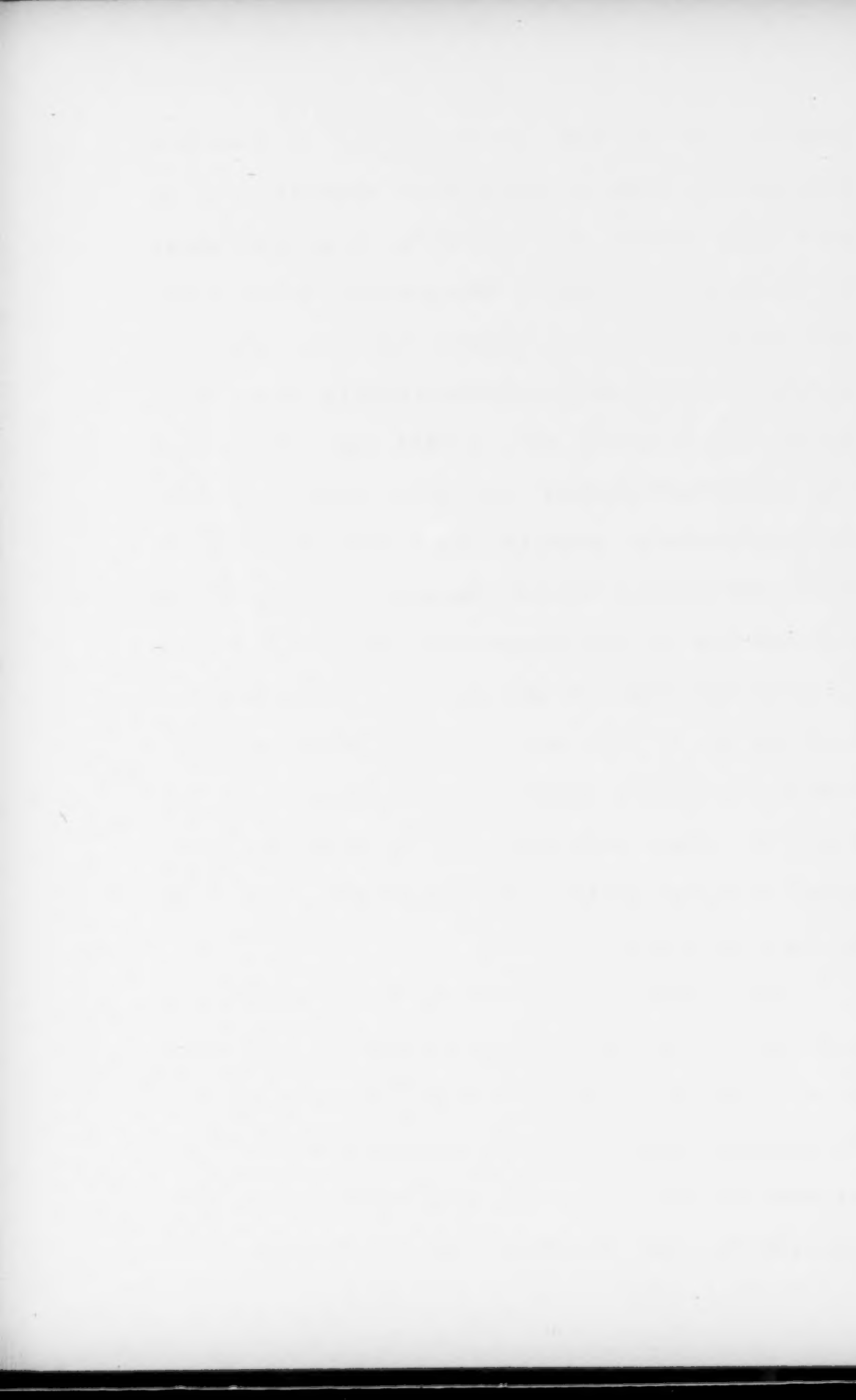
It has been held that a legislative enactment is constitutionally flawed when it fails to apprise the accused of the proscribed act, it encourages arbitrary and discriminatory enforcement and it makes criminal activities that are normally innocent. Kolendar vs. Lawson, supra; Hoffman Estates vs. Flip Side, Hoffman Estates, Inc., supra; Grayned vs. City of Rockford, supra; Papachristou, et al. vs. City of Jacksonville, supra.

The question becomes more substantial when the Court takes into consideration the characteristics of Idaho and its citizens. Idaho has approximately one million citizens who live in and travel over some 82,677 square miles. It is a friendly rural area with kind and outgoing



people. It is not uncommon for a complete stranger to come to the aid of another. It is even more common for people to stop and speak to children in their day-to-day activities. The issue this case brings to the Court is whether Idaho Code constitutionally makes such activity a crime. Mr. Sindak has challenged the constitutionality of this code section. He specifically asserts that the statute is constitutionally flawed because it fails to apprise him of the proscribed conduct and that it does not require the state to prove any intent to do a bad act. It is asserted that every free adult within the boundaries of the State of Idaho have and will on numerous occasions violate Idaho Code, §18-1509, if it is allowed to stand.

The State quite obviously has a compelling interest to protect the children of the state from those who wish to harm or injure them. It is assumed that the Idaho Legislature was attempting to build in some additional protection for our children when it enacted Idaho



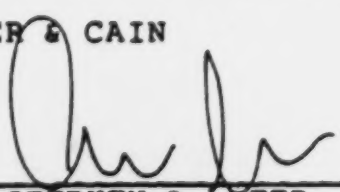
Code §18-1509, but the due process clause of the 14th Amendment also affords the accused certain rights. The State of Idaho, in prosecuting Mr. Sindak, was not required to prove or even present evidence as to his intent in order to get a guilty verdict. This flaw not only violated Mr. Sindak's constitutional rights but has further subjected each and every individual of this state to potential criminal punishment.

It is respectfully submitted that this case does raise a substantial question, not only for Mr. Sindak's personal due process rights, but also for those who will surely follow.

Based upon the above, it is respectfully requested that this Court grant certiorari.

BEER & CAIN

By



STEPHEN L. BEER
Attorney for
Petitioner



NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

EDWARD P. SINDAK, Petitioner

v.

STATE OF IDAHO, Respondent

ON PETITION FROM THE SUPREME COURT OF IDAHO

APPENDIX A TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

STEPHEN L. BEER
BEER & CAIN
302 West Idaho Street
Boise, Idaho 83702-6039
Telephone: (208) 336-2323
Fax: (208) 336-9060



IN THE SUPREME COURT OF THE STATE OF IDAHO

No. 17426

STATE OF IDAHO,)	
	)	Boise September 1988
Plaintiff-Respondent,	)	Term
)	
v.	)	Filed: May 9, 1989
)	
EDWARD P. SINDAK,	)	Frederick C. Lyon,
	)	Clerk
Defendant-Appellant.)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable Alan M. Schwartzman, District Judge. Petition for Review of the opinion of the Court of Appeals was granted.

District court order affirming the judgment of conviction in the magistrate division, on charge of enticing a child. The Court of Appeals reversed the conviction. Reversed and remanded with instruction to the magistrate court that the judgment of conviction be reentered.

Beer & Cain, Boise, Idaho, attorney for appellant. Mitchell L. Egusquiza argued.

Honorable Jim Jones, Idaho Attorney



General, Boise, Idaho; David R. Minert, Deputy Attorney General. David R. Minert argued. SHEPARD, C.J.

This is an appeal from a judgment of conviction of the misdemeanor crime of enticing children, I.C. § 18-1509, entered following trial in the magistrate court. Following an appeal to the district court, the judgment and conviction were affirmed. An appeal was taken therefrom to the Court of Appeals, which reversed the judgment of conviction on the basis that the statutory right to a speedy trial had been violated. State v. Sindak, 113 Idaho 893, 749 P.2d 1018 (Ct.App. 1988). The State of Idaho brings this appeal from the decision of the Court of Appeals. We reverse and remand with instructions to the magistrate court that the judgment of conviction be reentered.

The sole question presented on this appeal are the implications and applicability to the present state of facts of I.C. § 19-3501(3). That statute provides in pertinent part:

The court, unless good cause to the contrary is shown, must order the prose-



cution or indictment to be dismissed, in the following cases:

. . . . 3. If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters plea of not guilty with the court.

Defendant Sindak was charged in the magistrate court of the misdemeanor crime of enticing children. During the ensuing six months, the Sindak case had been scheduled for trial on two separate occasions. Due to the overcrowding of the magistrate court calendar, both trial dates were vacated. The record contains no showing that Sindak objected to the said vacating of the trial dates. We note parenthetically that statistics and records indicate that the dockets of the magistrate courts in Ada County are overcrowded in the extreme. It is common for a magistrate to set for trial six to ten misdemeanor cases at the same time on the same day. This is done in the hopes that most of those cases set will be vacated through a guilty plea. Statistics reveal that approximately forty-four thousand misdemeanor and traffic



infraction cases are processed by the magistrate courts in the Fourth Judicial District of Idaho per year. "The Idaho Courts 1987 Annual Report Appendix," p.80.

In the instant case, Sindak's trial was commenced six months and twenty-four days after he had entered his plea of not guilty. Sindak moved from dismissal on the grounds that his statutory right to a speedy trial had been violated. I.C. § 19-3501(3). That motion was denied, the cause proceeded to trial, and the defendant was convicted as charged. An appeal was taken to the district court as aforesaid, and the conviction was affirmed.

Thereafter Sindak appealed to the Court of Appeals. There it was found that the trial delay was attributable to the court, and such delay and rescheduling had not been requested, caused or stipulated to by the defendant.

Likewise, there is no showing here that the delay and rescheduling was requested, caused or stipulated to by the prosecution. The Court of Appeals held that the delay in trial violated



the guarantees of the statute, and ordered the judgment of conviction vacated. From that decision the State brings this appeal asserting the applicability of the balancing test enunciated in Barker v. Wingo, 407 U.S. 514 (1972). The State argues that applying the Barker balancing test to the instant facts requires the validation and affirmation of the defendant's conviction in the instant case.

We note that Sindak did not assert, nor did the Court of Appeals base its decision upon, a constitutional right to a speedy trial, as guaranteed by the Sixth Amendment to the United States Constitution, nor any provision of the Idaho Constitution. Rather, the decision of the Court of Appeals was based solely upon an asserted violation of Sindak's statutory right under I.C. § 19-3501.

We hold that the Court of Appeals in the instant case erred in relying almost exclusively upon the decision in State v. Hobson, 99 Idaho 200, 579 P.2d 697 (1978). In Hobson, as in the instant case, the Court declined to



address the issue of the applicability of the Sixth Amendment of the United States Constitution guaranteeing the right to a speedy trial. The Court in Hobson rather, focused solely upon the Idaho statute which is a predecessor of the statute at issue in the instant case. The statute considered in Hobson required a defendant to be tried during the next term of court after the information is filed. The opinion in Hobson emphasized the need for such trial during during the next term of court unless good cause to the contrary is shown. The Court noted that the State "has not shown any justification for failure to prosecute appellant during the two intervening terms of court . . . as is required by I.C. § 19-3501." Thereafter, in State v. Talmage, 104 Idaho 249, 658 P.2d 920 (1983) and the case of State v. Campbell, 104 Idaho 705, 662 P.2d 1149 (Ct.App. 1983), the courts considered the same necessity for trial at the following term of court as required by the statute. The facts in both Talmage and Campbell differ somewhat from the instant case



in that defendant. Nevertheless, the Court of Appeals stated in Campbell:

Prejudice is a central factor in analyzing the right to speedy trial. (Citation omitted). Where a defendant fails to make a showing of reasonable possibility of prejudice, this factor should be given very little weight, if any, for the defendant. Here there is no contention that Campbell's ability to present his defense was impeded by the delay. He has not alleged or shown that he was prejudiced by the delay in any way. We can ascribe no weight to the factor of prejudice in this case.

Campbell, 104 Idaho at 711. The decision of this Court in State v. Carter, 103 Idaho 917, 655 P.2d 434 (1982), was likewise based upon the then statute requiring trial of criminal cases at "the next term of court in which the indictment is triable." In Carter this Court held that "the 'balancing test' laid down in Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 23 L.Ed.2d 101 (1972), for interpreting the federal guarantee of speedy trial, is consistent with the protection afforded by our own state constitution and statutes." 103 Idaho at



921. (Emphasis added). The Court in Carter then proceeded to consider the factors of the Barker balancing test and rejected the claim of violation to a speedy trial after a delay of fourteen months.

The Court of Appeals in the instant case focused almost exclusively upon the decision of this Court in Hobson, and made only passing reference to the decision of this Court in State v. Russell, 108 Idaho 58, 696 P.2d 909 (1985). In so doing the Court of Appeals erred. In Russell we stated: "We further note that in the instant case, as distinguished from Hobson that it was not the prosecution who delayed the trial of the defendant; rather, the trial court upon its own motion vacated a trial setting because of congested and overloaded criminal trial docket." The Court further stated: "Here, the vacation of the trial setting for April 4, 1983, cannot be charged to the prosecution. Neither can it be charged to the defendant. Rather, it is neutral." 108 Idaho at 61.

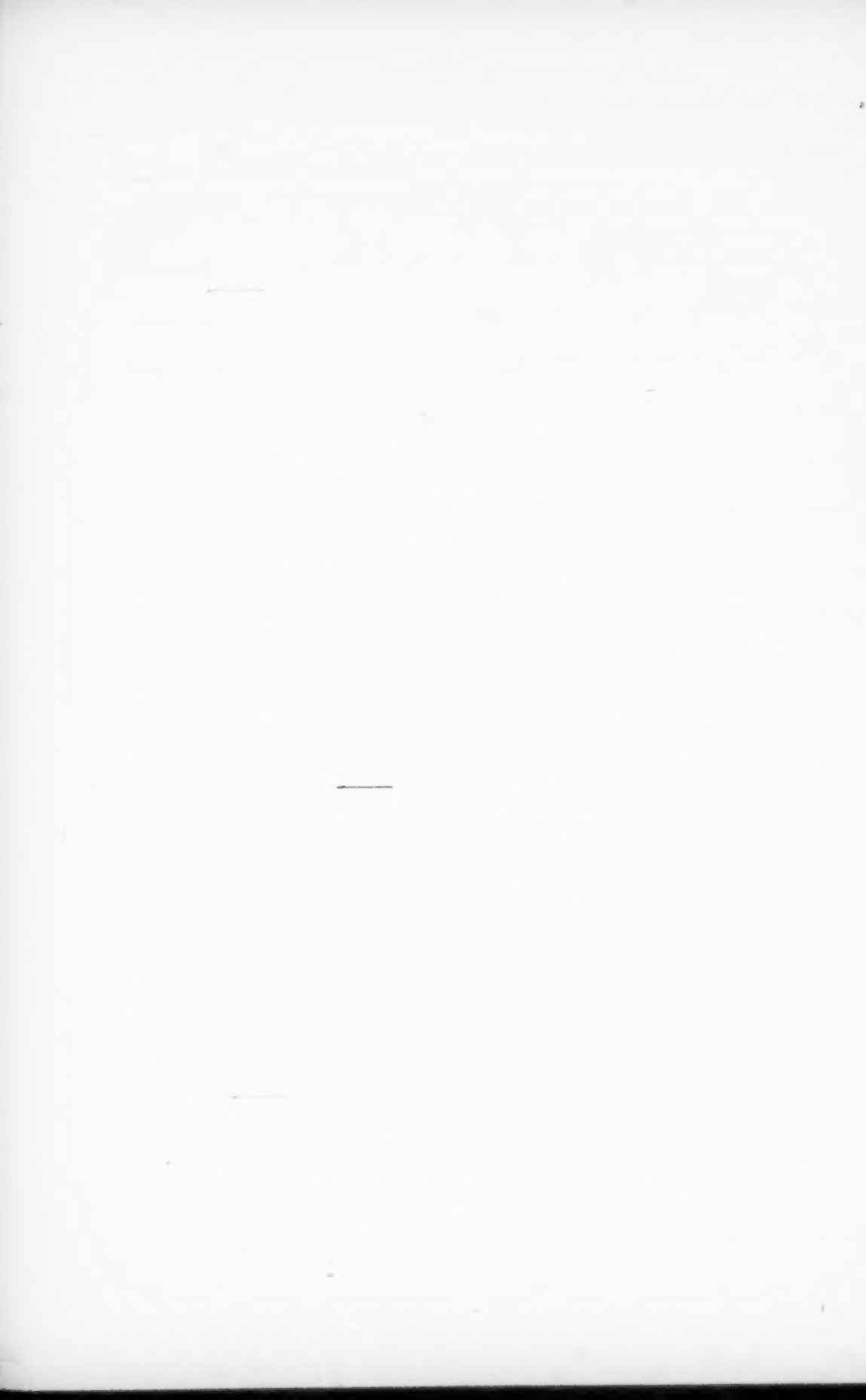


We deem the instant case to be substantially indistinguishable from State v. Russell, 108 Idaho 58, 696 P.2d 909 (1985).

The delay of time in bringing the defendant in the instant case to trial was twenty-four days beyond the six-month period prescribed in I.C. § 19-3501(3). That delay was not attributable to either the State or the defendant. The delay was solely attributed to the overly burdened trial calendar of the courts in the Fourth Judicial District. The Court of Appeals stated:

We cannot agree with this conclusion although we are aware of the burdens of the trial court in managing an overflowing docket. Such management problems alone, however do not equal good cause for delay. We remind the court of the importance of the right at issue and the necessity of limiting justification for an abrogation of that right.

The decision of the Court of Appeals further indicated that the record "is devoid of any showing that an effort to avoid the delay was made--e.g., by the possibility of assigning the case to another local judge or by bringing in



additional magistrates from elsewhere in the district to hear cases on a crowded local docket." We note the lack of any statutory or constitutional authority in the Court of Appeals to supervise the trial courts of this state.

Before the Court of Appeals the defendant-appellant raised issues in addition to that of speedy trial. Since the Court of Appeals found that Sindak's right to speedy trial had been violated, such issue was deemed dispositive, and the Court of Appeals did rule on the remaining issues raised by Sindak. Since this Court today reverses the Court of Appeals on the speedy trial issue, we also briefly address those issues raised in the Court of Appeals, but not discussed in its opinion. Those issues were discussed and ruled upon in the well-reasoned opinion of the district court. We affirm the decision of the district court on those remaining issues and consider that only a summary review is necessary.

1

Sindak argues that I.C. § 18-1501(1) is void for vagueness in that the statute provides



no notice as to the conduct that is forbidden. Hence, Sindak appears to be challenging the statute on the basis of overbreadth and vagueness. As noted in the decision of the district court, the statute is not overly broad. While the statute forbids one to persuade or attempt to persuade a minor child under sixteen to leave its home or school, or to enter buildings, etc., with the intent to conceal the child from public view, nevertheless the proscribed acts must be done without proper authority. As discussed in the opinion of the district court, permission or authority to do the proscribed acts may be express or implied, and the burden to show otherwise is placed on the State. The district court stated in its opinion:

In determining the sufficiency of a statute, the words of the questioned statute should not be evaluated in the abstract but should be considered with reference to the particular conduct of defendant. State v. Lenz, 103 Idaho 632, 634, 651 P.2d 566 (Ct.App. 1982). In the context and circumstances of this case, the statute gave Sindak sufficient notice that attempting to persuade Jeremiah Bradshaw to leave his home without parental



authority would subject him to the penalty of the law.

1 18-1509. Enticing of children.-(1)

A person shall be guilty of a misdemeanor if that person attempts to persuade, or persuades, whether by words or actions or both, a minor child under the age of sixteen (16) years to either:

(a) Leave the child's home or school;
or

(b) Enter a vehicle or building; or

(c) Enter a structure or enclosed area, or alley, with the intent that the child shall be concealed from public view; while the person is acting without the authority of (i) the custodial parent of the child, (ii) the state of Idaho or a political subdivision thereof or (iii) one having legal custody of the minor child.

Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of aid or assistance to a minor child.

We agree, and affirm the district court in its holding that the statute in question is not void for vagueness, nor overbroad as intruding upon constitutionally protected conduct.

It was asserted before the district court and the Court of Appeals that the provisions of I.C. § 18-1509(1) should be narrowly construed



to the fixed residence of a family. In the instant case it is charged that Sindak attempted to lure the child in question from a travel trailer parked next to the family home. Hence, it is argued by Sindak that a travel trailer is not a home within the context of the statute. At trial the magistrate court ruled, and the district court affirmed on appeal, that the term "home" and "dwelling" are synonymous in meaning. We agree. In the instant case a travel trailer in which the child was spending the night was in the yard of the family residence, approximately ten to twelve feet from the parents' bedroom window. Historically the word "home" has been defined to include the main dwelling and its curtilage, under Fourth Amendment analyses. See W. LaFave & J. Israel, Criminal Procedure, § 3.2(c) (1985). Curtilage is commonly defined as the enclosed space of ground and buildings immediately surrounding a dwelling house. Black's Law Dictionary (5th ed. 1969). We find no error in the decision of the magistrate court and the district court.

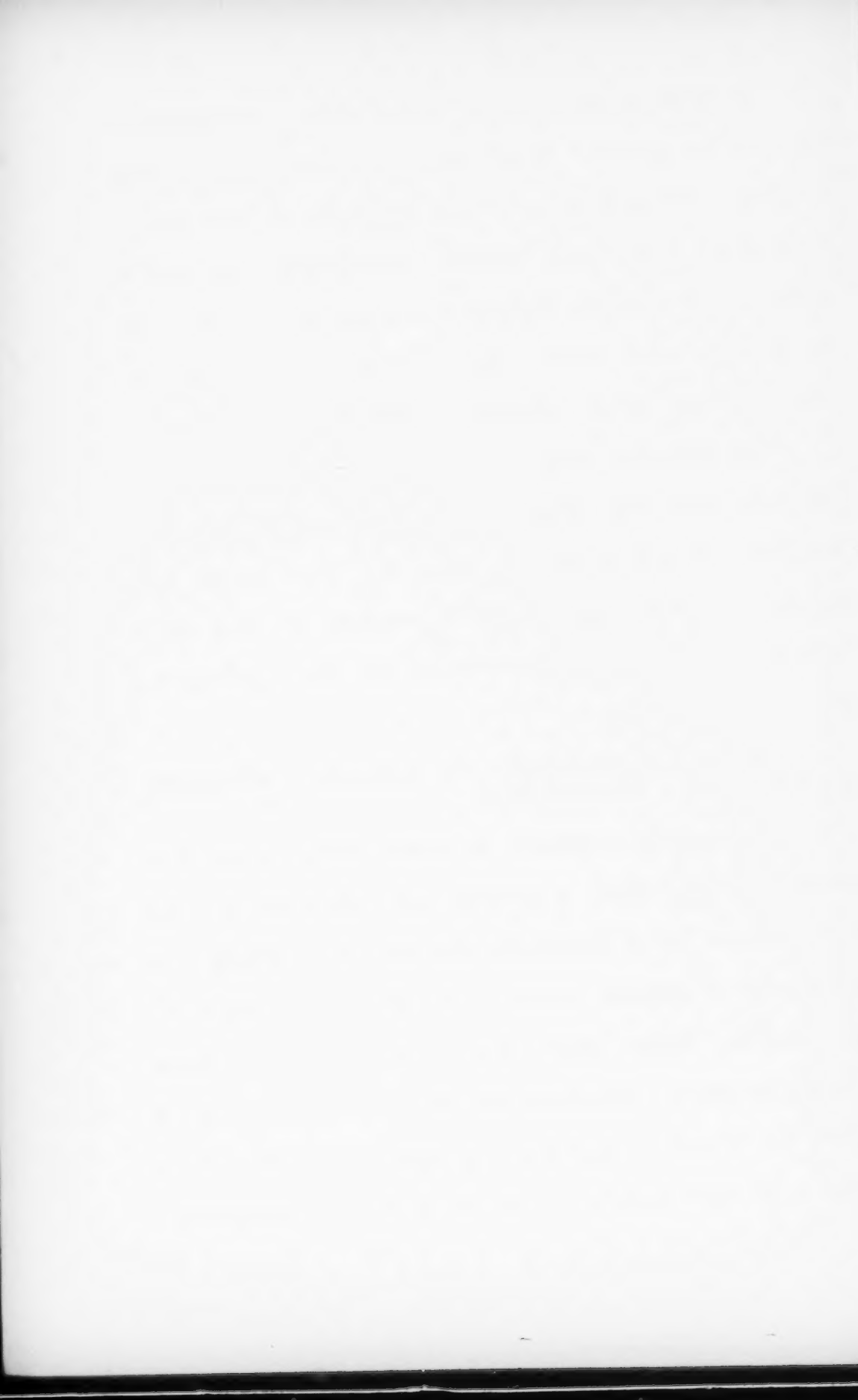


Sindak also argues that the prosecution failed to prove the crime was committed in Ada County. We disagree. The parents of the child testified that the family residence was on a particular street within the limits of the City of Boise, and that the incident in question occurred at that address. We find no error.

We reverse the decision of the Court of Appeals and reinstate the decisions of the magistrate and district courts. The cause remanded to the magistrate division of the district court for enforcement of the judgment. No costs allowed.

BAKES and JOHNSON, JJ. concur. McFADDEN, J. (Pro Tem.) dissenting.

Idaho law imposes a high duty upon the State to see that a person is afforded all of his rights in a criminal action, including his right to a speedy trial. In interpreting I.C. § 19-3501, this Court has held that the State holds primary responsibility for bringing a case to trial. State v. Hobson, 99 Idaho 200, 579 P.2d 697 (1978). It is also the responsi-



bility of the State to enforce a defendant's right to a speedy trial. A defendant has no duty to demand a speedy trial at the expense of waiving that right. Barker v. Wingo, 407 U.S. 514 (1972).

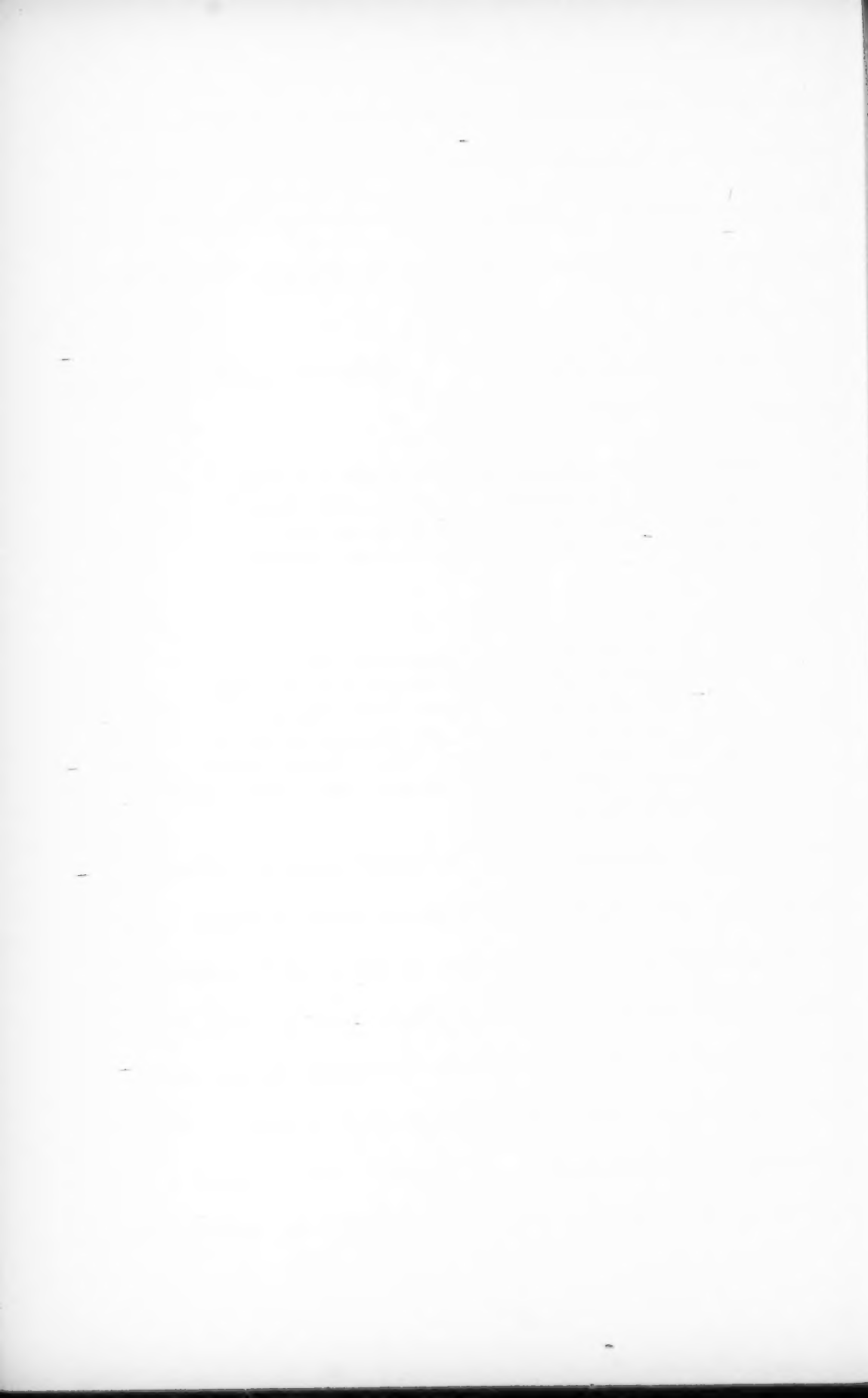
I.C. § 19-3501, in pertinent part, provides:

The court unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

. . . .

(3) if a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

Sindak was charged with a misdemeanor offense only, and the record indicates that Sindak was tried April 24, 1986, six months and twenty-three days after he entered his not guilty plea on October 1, 1985. Sindak's first trial date had been set for November 21, 1985. This setting was vacated and reset for trial on February 6, 1986. When the parties appeared



for trial, once again the trial was vacated and again reset. There is no showing in the record that the delay was attributable to any action or waiver by the defendant. Accordingly, the defendant established a prima facie showing that his statutory right to a speedy trial under I.C. § 19-3501(3) has been denied. Thus, the burden to show "good cause" for the delay is upon the State. State v. Hobson, 99 Idaho at 202; State v. Stuart, 113 Idaho 494, 745 P.2d 1115 (Ct.App. 1987); State v. Gabrielson, 109 Idaho 507, 708 P.2d 912 (Ct.App. 1985).

In the opinion of the majority, the delay in this case was attributable to a crowded court calendar, and as such, is justification for the lack of speedy trial. In my opinion, the mere fact that other cases of undetermined age demanded priority consideration of the magistrate, does not excuse the delay, absent a showing of total inability to bring the case to trial within the requisite time before another judge or magistrate, or that all the other cases then before the magistrate were of higher



priority than defendant Sindak's. At the time of trial there were ten magistrates assigned to Ada County, and fourteen assigned to the Fourth Judicial District of Idaho.

I.R.Cr.P. 50 allows "[a]ny hearings or proceedings [to] be continued at a time and place certain by order of the court upon motion of any party, upon stipulation of the parties, or upon motion of the court." (Emphasis added). A motion on the part of the prosecution or the court necessitates notice to the defendant, and an opportunity to be heard. There is nothing in the record of this case to indicate compliance with this rule by either the prosecution or the court.

The courts, as an arm of the State, are obligated to comply with this statute as is any other party. Consequently, the Court cannot now exploit their own inaction in excusing non-compliance with I.C. § 19-3501.

In my opinion, the provisions of 19-3501(3) require dismissal of the misdemeanor offense charged against the defendant Sindak, which



dismissal would be a ban to any further prosecution. I.C. § 19-3506. HUNTLEY, J., dissenting.

I concur in the cogent and concise analysis of Justice McFadden. I respectfully take strong issue with the analysis of the majority.

Idaho Code § 19-3501 provides that the Court must order the prosecution be dismissed "if the trial has not been postponed upon his [the defendant's] application." No where does the statute provide that there is an exception if the courts are at fault in the management of their calendars. Not only do we have adequate magistrates in this state to handle these matters, Idaho's thirty-three district judges are available to sit on these cases in an emergency. The very purpose of the statute is to require that the agencies of government, including both the prosecutor and the courts, provide a defendant a speedy trial.

The suggestion in the majority opinion that the court is a "neutral" party is unsupported either in case Law or of logic. The caption of the case is the State of Idaho v.



Sindak. The courts, for the purpose of managing their calendars, are part of the state and not part of the defense. The majority opinion totally eviscerates the statute and destroys the policy of both the legislature and what should be the policy of the Supreme Court, that misdemeanor defendants receive a speedy trial.

In this case there was a lack of speedy trial due solely to one reason, and that is, faulty calendar management, which I say in an uncritical way in that our courts regularly process thousands of cases each year and do so in a timely manner. One of the major reasons they are processed in a timely manner is that they are required to be processed in a timely manner. It is regrettable that we would destroy that laudable public policy of both the legislature and the courts in order to affirm the conviction of one defendant in one case.



Letter from The Supreme Court of the State of
Idaho addressed to Mr. Brian L. Johnson:

May 10, 1989

Mr. Brian L. Johnson
Assistant Managing Editor
West Publishing Company
P.O. Box 64526
St. Paul, MN 55164-0526

RE: STATE v. SINDAK
1989 Slip Opinion No. 68
Filed: 5/9/89
Idaho Supreme Court Nos. 17426

Dear Mr. Johnson:

The attached special concurrence written
by Justice Byron J. Johnson was inadvertently
omitted from the above-captioned opinion. When
you print your advanced sheets, would you please
see that this is inserted on page 7 of the slip
opinion, directly after the majority opinion.

Thank you for your attention to this mat-
ter.

Sincerely,

BYRON J. JOHNSON
Justice

ATTACHMENT

cc: Justices
Judge Alan Schwartzman
Counsel



STATE v. SINDAK
Supreme Court No. 16869

JOHNSON, J., specially concurring.

While I concur with the majority opinion, I am concerned that it does not sufficiently harmonize State v. Hobson, 99 Idaho 200, 579 P.2d 697 (1978) and State v. Russell, 108 Idaho 58, 696 P.2d 909 (1985). The decision of District Judge Alan M. Schwartzman, the trial judge in this case, presents a succinct reconciliation of these two cases that is satisfying to me. Judge Schwartzman said:

Idaho Code section 19-3501(3) (Supp. 1986) prescribes a six month period in which a criminal defendant must be brought to trial following a plea of not guilty to a misdemeanor offense. If his trial is not held within that time frame and the delay is not due to the defendant's application, the prosecution or indictment must be dismissed. Sindak entered a not guilty plea on October 1, 1985, and his trial was finally held, following two postponements, on April 24, 1986. Neither of the postponements were due to Sindak's application. Since the delay between the entry of the not guilty plea and the trial was six months and 24 days, Sindak has established a prima facie case under section 19-3501(3).

When a criminal defendant has established a prima facie case under section 19-3501, the burden shifts to the state to show that "good cause" existed for the delay. State v. Hobson, 99 Idaho 200, 202, 579 P.2d 697 (1978). In order to determine whether good cause has been shown, the factors set out by the United States Supreme Court in Baker v. Wingo, 407 U.S. 514 (1972), are to be weighed by the court. State v. Russell, 108 Idaho 58, 62, 696 P.2d 909 (1985). These factors are: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. Barker, 407 U.S. at 530.

Perhaps this formulation will be helpful to others, as it has been to me, in harmonizing Hobson and Russell.



IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	
	)	ORDER DENYING
Plaintiff-Respondent,	)	PETITION FOR
	)	REHEARING
v.)	
	)	No. 17426
EDWARD P. SINDAK,)	
	)	Ref. No.
Defendant-Appellant.	)	89RH-30

The Appellant having filed a Petition for Rehearing on May 30, 1989 and a supporting Brief on June 13, 1989, of the Court's Opinion released May 9, 1989; therefore, after due consideration,

IT IS HEREBY ORDERED that Appellant's Petition for Rehearing be, and hereby is, DENIED.

DATED this 29th day of June, 1989.

By Order of the Supreme Court

Frederick C. Lyon, Clerk

cc: Counsel of Record
District Court Clerk
District Judge Schwartzman

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

No. 16869

STATE OF IDAHO)	
)	
Plaintiff-Respondent,	)	1988 Opinion
	)	No. CA-6
v.)	
	)	Filed:
EDWARD P. SINDAK,	)	January 29,
	)	1988
Defendant-Appellant.	)	Frederick C.
	)	Lyon, Clerk

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Honorable Alan M. Schwartzman, District Judge; Honorable Richard Schmidt, Magistrate. District court order affirming the judgment of conviction in the magistrate division, on charge of enticing a child, reversed.

Judgment vacated. Mitchell Egusquiza of Beer & Cain of Boise for appellant. Jim Jones, Attorney General; David R. Minert, Deputy Attorney General; for respondent.



PER CURIAM.

Edward Sindak was found guilty of violating I.C. § 18-1509, enticing of children, by a magistrate division jury, a first offense punishable as a misdemeanor. On appeal to the district court, the judgment was affirmed. Sindak appeals from that decision. Although Sindak raises several grounds for reversal of his conviction, we conclude that one issue -- the failure of the magistrate to hold Sindak's trial within the time period required by statute -- is dispositive. We vacate the judgment of conviction.

Sindak was charged with the crime of enticing children when he attempted to persuade a minor child to leave a trailer parked in the backyard of the child's home without the permission of the child's parents. A complaint against Sindak was issued on September 13, 1985. Sindak pled not guilty on October 1. A trial date was originally set for November 21. This date was vacated and reset for February 6, 1986. When the parties appeared for trial,

once again the trial was vacated and reset for a later date, April 24, 1986. On April 11, Sindak moved to dismiss the case for failure of the state to try him within the six month time limit prescribed by I.C. § 19-3501(3). The court denied his motion and trial was held. The magistrate's ruling was upheld on appeal to the district court.

Idaho Code § 19-3501(3) states in pertinent part:

The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

. . . .

3. If a defendant, charged with a misdemeanor offense, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the defendant enters a plea of not guilty with the court.

Under the terms of the statute an action must be dismissed if prosecution is in violation of the time requirements and there exists no "good cause" for the delay. State v. Dillard, 110 Idaho 834, 718 P.2d 1272 (Ct.App. 1986). If



cause, we should consider the balancing test prescribed by Barker v. Wingo, 407 U.S. 514 (1972). The factors of this test are: the length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. We decline to apply these factors to this case.

The Barker analysis was adopted to determine good cause under a violation of the constitutional right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution. Sindak has not alleged a violation under the constitutional right to a speedy trial, but instead a violation of the statutory right under I.C. § 19-3501. As determined in Hobson, supra, at 201, 579 P.2d at 698, the statutory right to a speedy trial is not identical to the right under the United States Constitution. See State v. Lindsay, 96 Idaho 474, 531 P.2d 236 (1975). The statutory right to a speedy trial supplements and gives additional rigor to the constitutional right.



In Hobson, the Court held that the application of the Barker analysis ignored the separate legislative supplementation of I.C. § 19-3501. We agree. The statute has a plain meaning that cannot be disregarded. It provides that a prosecution "must" be dismissed if trial is delayed beyond six months without good cause. Based on the distinction drawn in Hobson, our analysis in this case does not require an application of the Barker factors. Hobson is still good law. It was distinguished, but not overruled, in State v. Russell, 108 Idaho 58, 696 P.2d 909 (1985). See also State v. Fairchild, 108 Idaho 225, 697 P.2d 1239 (Ct.App. 1985).

The delay here was based upon setting Sindak's case over in order to accommodate more pressing cases. The court's docket sheet denotes Sindak's case as "not [a] priority case." These records also indicate that Sindak was ready for trial at each of the first two trial dates.

In denying Sindak's motion for dismissal, the trial court reviewed its own actions in causing the delay and determined that good cause existed. We cannot agree with this conclusion although we are aware of the burdens of the trial court in managing an overflowing docket. Such management problems alone, however, do not equal good cause for delay. We remind the court of the importance of the right at issue and the necessity of limiting justification for an abrogation of that right. We repeat our language from Stuart:

The six-month time limitation for speedy trial under I.C. § 19-3501 does not represent a whimsical time frame. . . . Trial courts must be diligent in securing compliance with time restraints. It is the court's duty to arrange for trial, and more failure to do so is not good cause for delay.

Stuart, supra, at _____, 745 P.2d at 1117. The administrative convenience in rescheduling Sindak's case one time can be understood by this Court. This, however, will not excuse or justify the second change of trial dates which delayed the case beyond the statutory limitation.



The record is devoid of any showing that an effort to avoid the delay was made -- e.g., by the possibility of assigning the case to another local judge or by bringing in additional magistrates from elsewhere in the district to hear cases on a crowded local docket.

We conclude that the trial court erred in failing to grant Sindak's motion to dismiss. Because the district court upheld the magistrate's ruling, we reverse the district court's determination and we vacate the judgment of conviction.

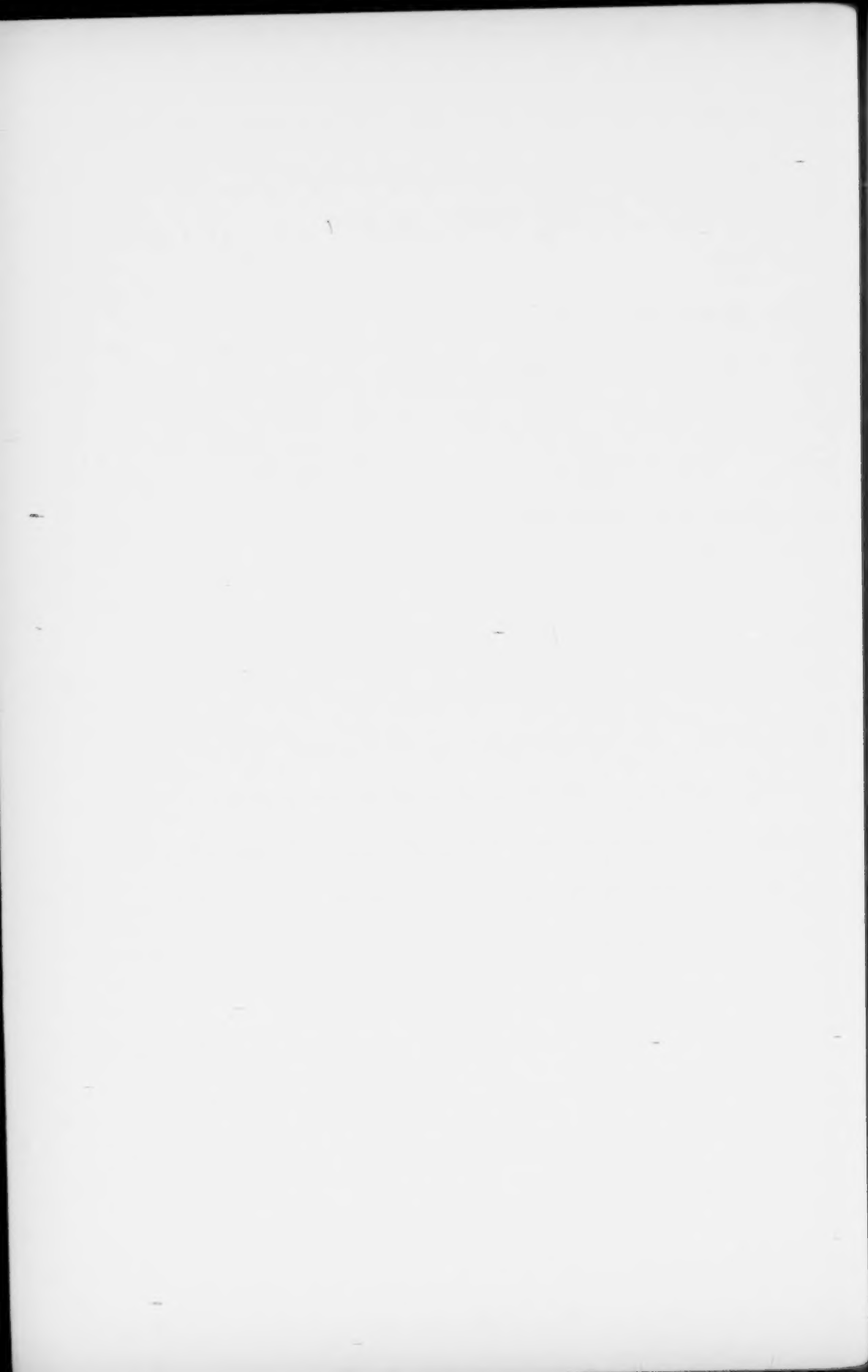


IN THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR
THE COUNTY OF ADA

THE STATE OF IDAHO,)	
Plaintiff/Respondent,	)	CASE NO. 13652
)	
vs.	)	MEMORANDUM
	)	DECISION
EDWARD P. SINDAK,	)	ON APPEAL
)	
Defendant/Appellant.)	

This case comes before the Court on defendant, Edward P. Sindak's, appeal from his conviction by a Magistrate Division jury on April 24, 1986, of violating Idaho Code § 18-1509 (Supp. 1986). Section 18-1509 proscribes the crime of enticing of children and is punishable in the first offense as a misdemeanor. Jurisdiction of this court is provided by Idaho Code § 1-2213 (1979).

The original complaint against Sindak was issued on September 13, 1985, charging him with attempting to persuade two minor children to leave their home and enter his house without



their parent's permission on or about midnight of August 18, 1985. The amended complaint, filed April 24, 1986, reads as follows:

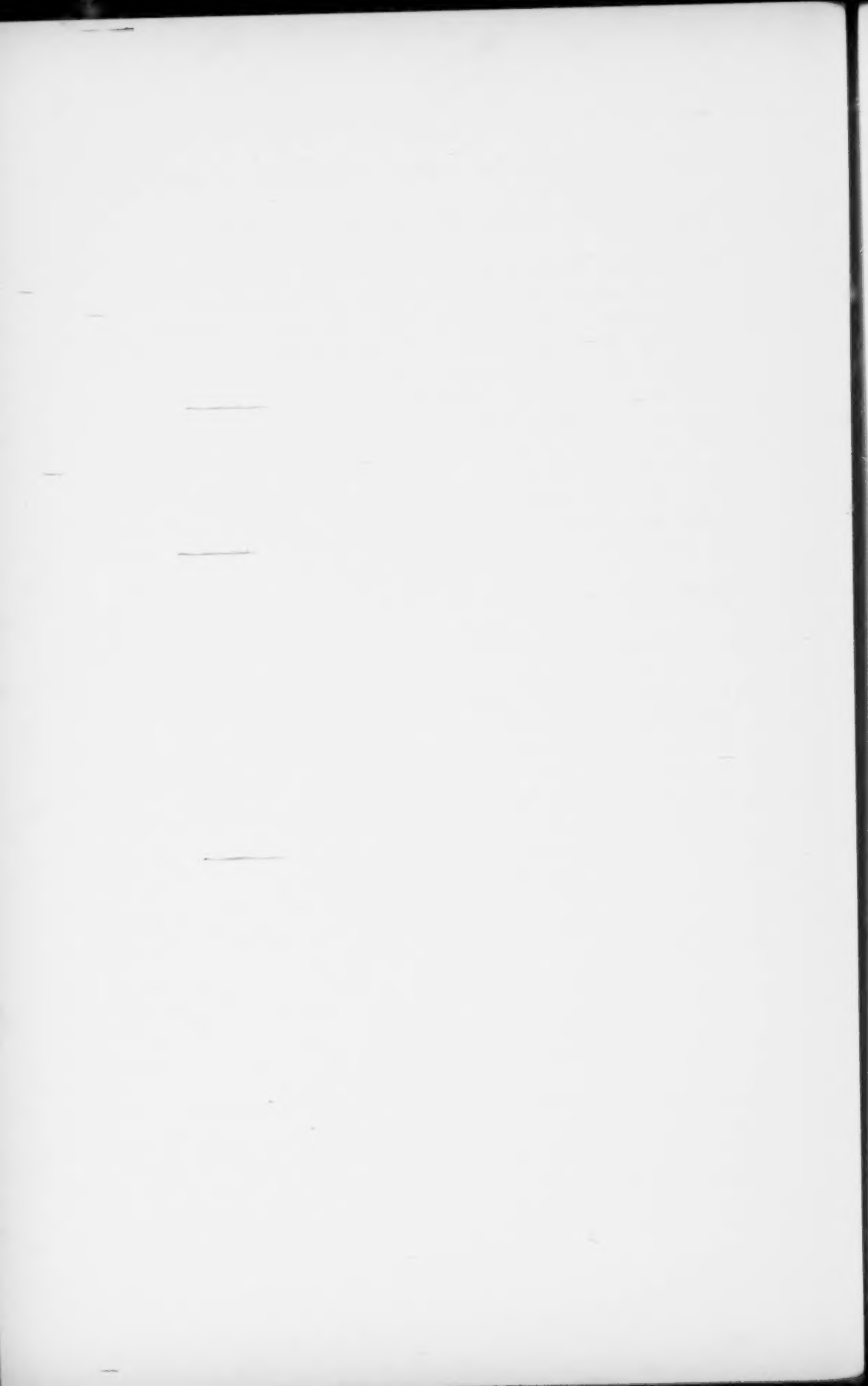
That the Defendant, EDWARD P. SINDAK, on or about the 18th day of August, 1985, in the City of Boise, State of Idaho, did attempt to persuade by words or actions or both, a minor child, to wit: JEREMIAH BRADSHAW, under the age of sixteen (16) years, to wit: 9 years old, to leave a trailer parked in the backyard of his home, without the permission of his parents. Violation of Idaho Code § 18-1509.

This behavior was alleged to be in violation of section 18-1509 which reads:

(1) A person shall be guilty of a misdemeanor if that person attempts to persuade, or persuades, whether by words or by actions or both, a minor child under the age of sixteen (16) years to either:

- (a) Leave the child's home or school; or
- (b) Enter a vehicle or building; or
- (c) Enter a structure or enclosed area, or alley, with the intent that the child shall be concealed from public view;

while the person is acting without the authority of (i) the custodial parent of the child, (ii) the State of Idaho or a political subdivision thereof or (iii)



one having legal custody of the minor child. Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of aid or assistance to a minor child. (2) Every person who is convicted of a violation of the provisions of this section shall be punished by imprisonment in the county or municipal jail for not more than six (6) months or by a fine of not more than one thousand dollars (\$1,000) or by both such fine and imprisonment. A person convicted a second or subsequent time of violating the provisions of this section shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for a period of time of not more than five (5) years.

Sindak entered a plea of not guilty on October 1, 1985, and a jury trial was scheduled to commence on November 21, 1985. However, on the original date of trial, the case was "bumped" or continued at the behest of the trial court and reset to February 6, 1986. The February 6th trial date in turn was vacated by the court due to a scheduling conflict with yet another case with higher priority. Trial was rescheduled for April 24, 1986. Prior to trial (April 11) Sindak moved to dismiss the action against him for failure of the State to try him



within the six-month time frame established by Idaho Code Section 19-3501(3). This motion was denied in a hearing held on April 22, 1986. Thereafter, Sindak was tried on April 24, 1986, as scheduled, and convicted by a jury of the charged offense. Notice of appeal was filed on May 5, 1986.

On this appeal, Sindak raises five issues: (1) whether the state failed to prosecute him within the time frame of Idaho's speedy trial act; (2) whether the enticement of child statute fails to state a crime due to the lack of a specified intent; (3) whether the child enticement statute is void for vagueness; (4) whether the trailer in which Jeremiah Bradshaw was in at the time of the enticement could be considered a "home" within the meaning of the child enticement statute; and (5) whether the prosecution established at trial that the crime occurred in Ada County, Idaho. These issues will be addressed in turn.



SPEEDY TRIAL

Idaho Code § 19-3501(3) (Supp. 1986) prescribes a six-month period in which a criminal defendant must be brought to trial following a plea of not guilty to a misdemeanor offense. If his trial is not held within that time frame and the delay is not due to the defendant's application, the prosecution or indictment must be dismissed. Sindak entered a not guilty plea on October 1, 1985, and his trial was finally held, following two postponements, on April 24, 1986. Neither of the postponements were due to Sindak's application. Since the delay between the entry of the not guilty plea and the trial was six months and 24 days, Sindak has established a prima facie case under section 19-3501(3).

When a criminal defendant has established a prima facie case under section 19-3501, the burden shifts to the State to show that "good cause" existed for the delay. State v. Hobson, 99 Idaho 200, 202, 579 P.2d 697 (1978). In order to determine whether good cause has been



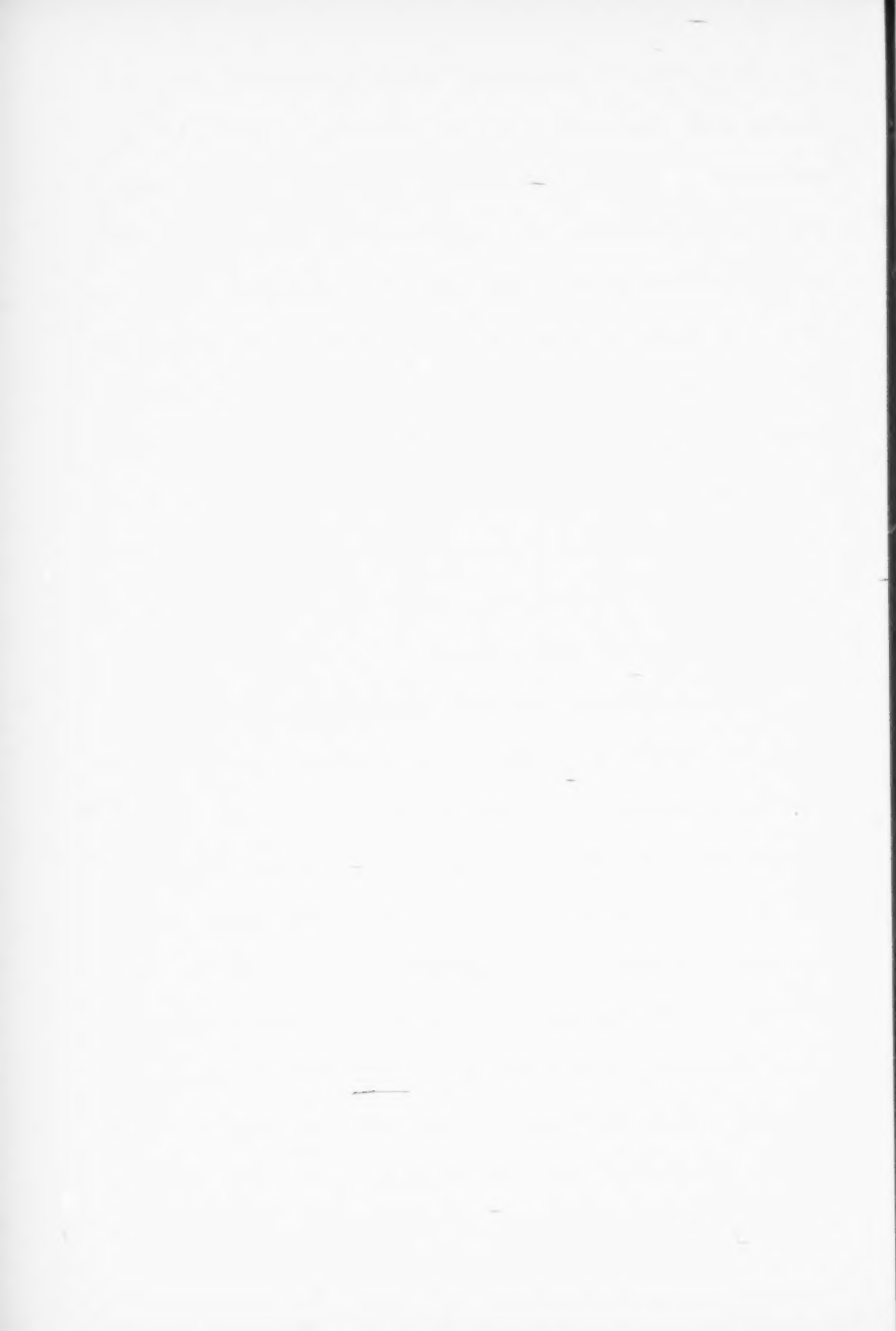
shown, the factors set out by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972), are to be weighed by the court. State v. Russell, 108 Idaho 58, 62, 696 P.2d 909 (1985). These factors are: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. Barker, 407 U.S. at 530.

The length of the delay in this case is minimal, being only 24 days. As for the reasons for the delay, at least two and one-half months were attributable to the trial court in managing its crowded docket. Delays attributable to the court in managing its docket are neutral and cannot be charged to the State. Russell, 108 Idaho at 61. There is no indication in the record that Sindak objected to the double rescheduling of his trial, although he objected to the six-month delay almost immediately after that time had elapsed. As for prejudice, three interests have been identified as potentially being imperiled by the lack of a speedy trial:



(1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) impairment of the defense. Id. at 62. Here, Sindak complains of attorney's fees and the unavailability of one of the alleged victims who was also a potential witness. An increase of attorney fees is not one of the interests that has been recognized as creating prejudice for speedy trial purposes. As for the lack of one of the alleged victims who was also a material witness, Sindak has made no actual showing of prejudice in the record.

After balancing the Barker v. Wingo factors in order to determine whether good cause has been shown for the delay in excess of six months before Sindak was tried after pleading not guilty, this court holds that good cause has been shown. The length of the delay was minimal; the reason for the delay was a crowded court docket, chargeable to the court which is neutral; the defendant did not object to the double rescheduling of trial; and no actual showing of prejudice has been made. The City



of Boise was not in violation of 19-3501(3) in failing to try Sindak within six months of his not guilty plea. See and compare State v. Drake, Memorandum Opinion and Order of Judge Gerald Schroeder, Fourth District Court Case No. 13683, dated October 6, 1986.

INTENT

Sindak next argues that section 18-1509(1) fails to state a crime in that no intent element is provided for in that statute. Under Idaho Code § 180-14 (1979), "[i]n every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence." However, "intent" as used in section 18-114 means "not an intent to commit a crime but is merely the intent to knowingly perform the inderdicted act" State v. Taylor, 59 Idaho 724, 738, 87 P.2d 454 (1939). Section 18-1509(1) makes it a misdemeanor to attempt to persuade a minor under the age of sixteen (16) to leave the child's home without parental authority. To be found guilty thereunder, Sindak must have the general intent to



perform the act with which he was charged, i.e., attempting to persuade Jeremiah Bradshaw to leave a trailer parked in the backyard of his home without his parent's permission.

This court finds that there was sufficient evidence for the jury to have found such a general intent. No specific criminal intent is a requisite element of the crime charged, nor need it be.

Whether a criminal intent is a necessary element of a statutory offense is a matter of construction to be determined from the language of the statute, in view of its manifest purpose and design, and, where the intent is not made an ingredient of the offense, the intention with which the act is done, or the lack of any criminal intent in the premises, is immaterial.

State v. Scott, 72 Idaho 202, 211, 239 P.2d 258 (1952), quoting State v. Sterrett, 35 Idaho 580, 583, 207 Pac. 1071 (1922). It is apparent that the Idaho legislature made the acts proscribed in section 18-1509(1) a crime without any specific intent requirement. In this sense, the statute is little different from I.C. § 16-1817, to wit, aiding, causing or encouraging

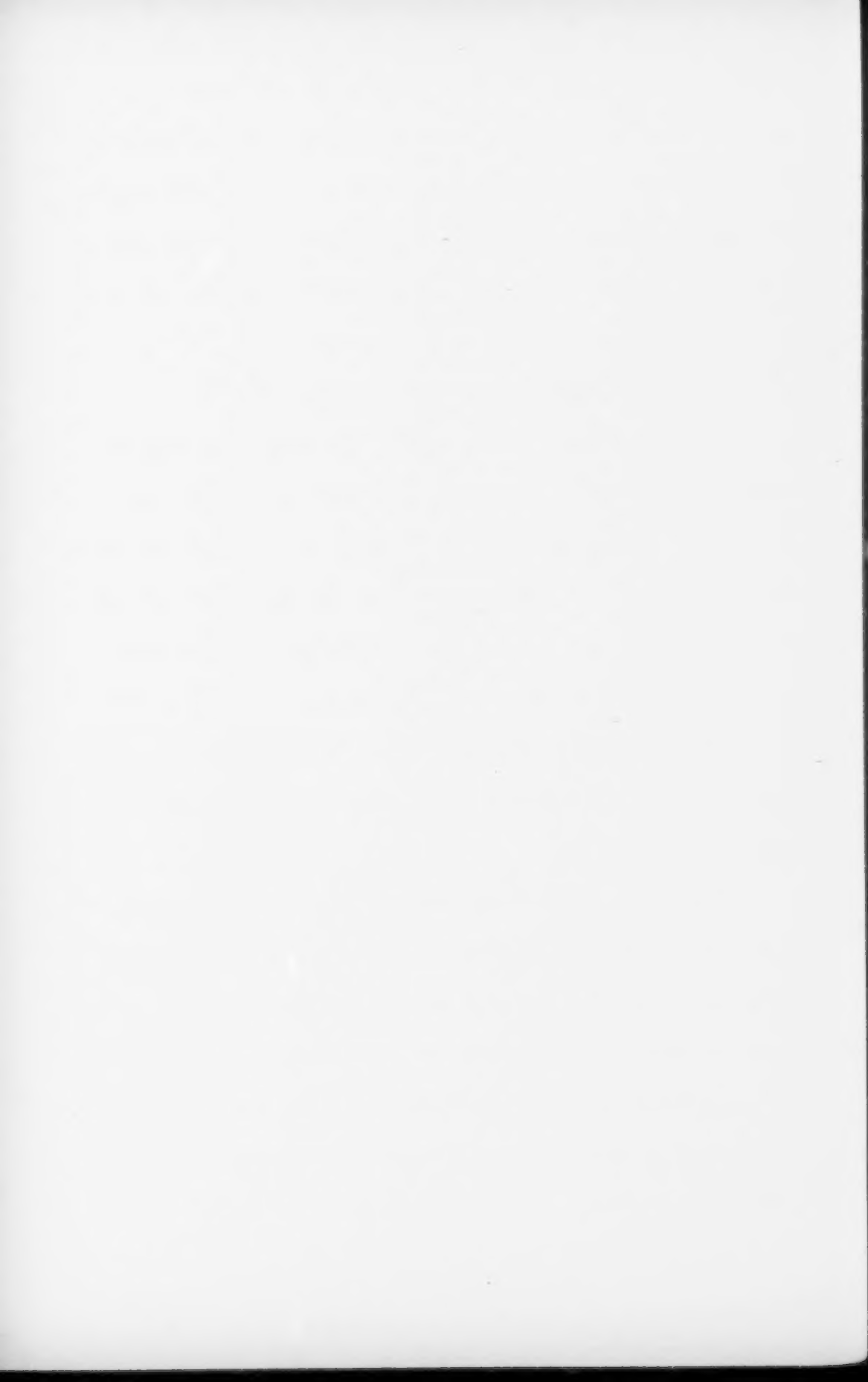


a child to come within purview of the Youth Rehabilitation Act. For example, a violation could occur by simply keeping a child out past curfew against or without proper parental permission. The lack of specific intent alone does not invalidate the statute.

VOID FOR VAGUENESS

That section 18-1509(1) is void for vagueness is Sindak's argument. Specifically, Sindak argues the statute provides no notice as to what conduct is forbidden or considered to be criminal and as presently written would make even the most innocent of conduct a crime. The state argues that the statute is both clear and definite and properly proscribes inappropriate conduct.

The void for vagueness challenge implicates the due process clauses of the Fourteenth Amendment of the United States Constitution and Article One, Section 13 of the Idaho Constitution. While greater protection may be afforded individuals under the state constitution than under the federal constitution, the rules



governing facial challenges to our statutes under either the Idaho or the federal due process clauses are basically the same. State v. Newman, 108 Idaho 5, 10 n. 6, 696 P.2d 856 (1985).

Sindak appears to be making a facial challenge to the broad application of section 18-1509(1) as well as its alleged vague standards. When a facial attack is made on a statute as to its overbreadth and its vagueness, the court must first consider the issue of overbreadth. Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494 (1982). To be unconstitutionally overbroad, a statute must intrude upon a substantial amount of constitutionally protected conduct. Newman, 108 Idaho at 11. Unless a first amendment right is implicated, there is a strong policy against applying the overbreadth doctrine in a facial constitutional challenge. Id.

Sindak claims that the law would criminalize the innocent act of asking a child in for a sugar cookie by a "Grandma Moses." Presumably,

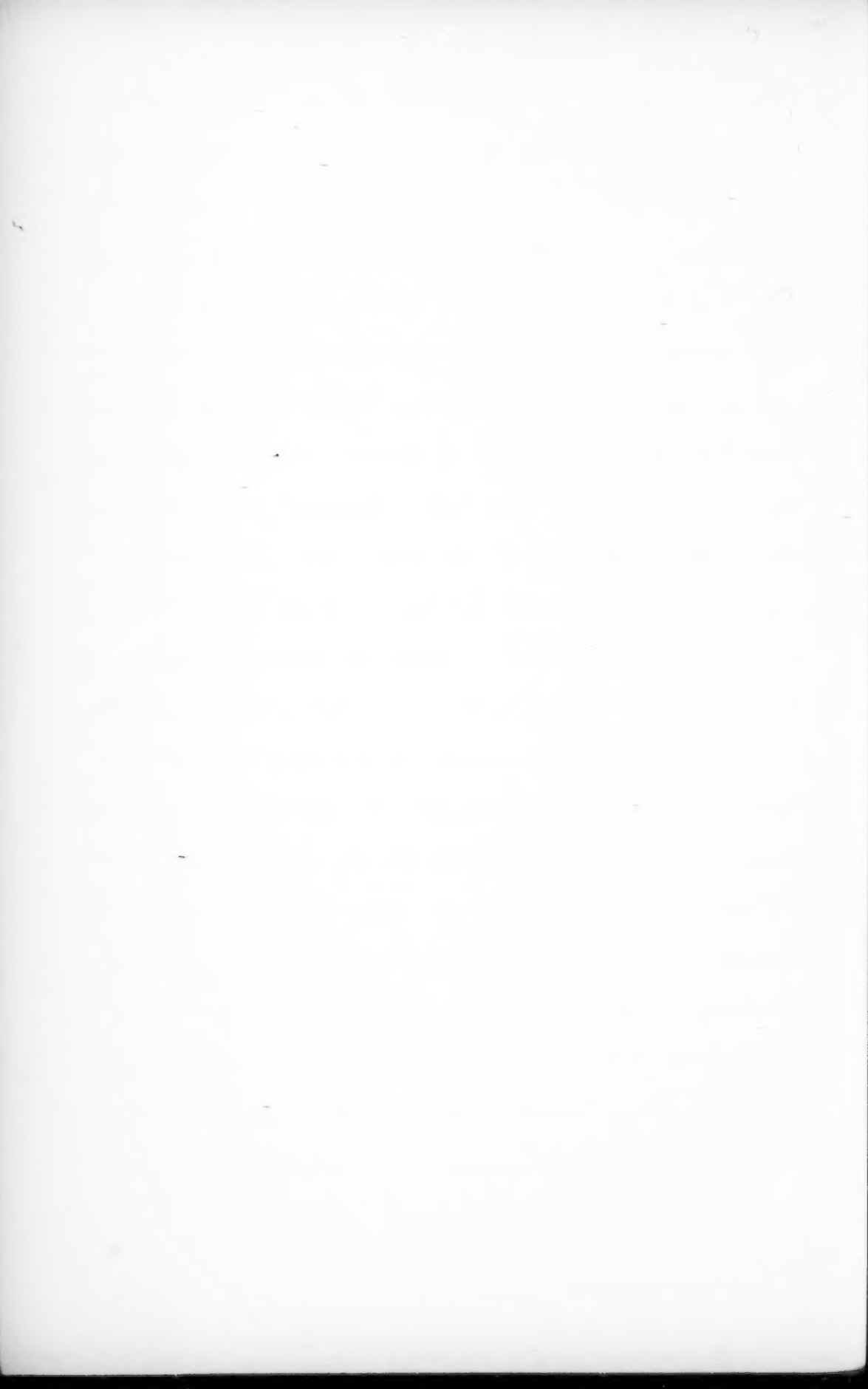


this would implicate the right of free association, generally protected by the First Amendment to the United States Constitution. However, section 18-1509(1) is not as broad as Sinda suggests. To be found guilty under its strictures, a person must not only engage in one of the proscribed acts (attempt to persuade or persuade a minor child under the age of sixteen (16) to leave his home or school; or to enter a vehicle or building; or to enter a structure, enclosed area or alley with the intent to conceal the child from public view); but that person must also do the proscribed act without proper authority. The proper authority may come from the custodial parent of the child, the State of Idaho or one of its subdivisions, or one having legal custody of the child. In addition, an exception exists for the purpose of rendering aid or assistance to the child.

The welfare of children is a legitimate state concern. Matter of Adoption of McMullen, 691 P.2d 17 (Kan. 1984). The stated legisla-



tive purpose of section 18-1509 is "[t]o provide statutory authority to assist our Law Enforcement officers, in protecting the children of our State. Statement of Purpose, Senate Bill 1090 (1985) (enacted and codified as Idaho Code § 18-1509). Certainly, the state has an interest in protecting children from abuses other than sexual. Neither Grandma Moses, nor any other individual, has the inherent right to do the proscribed acts unless that person has expressed or implied authority from the parent, custodian, or state. Such permission may be implied when the parent has permitted the practice in the past without objection; or has allowed the child to engage in activities, such as delivering newspapers, which customarily requires the child to go into other people's homes; or would otherwise acquiesce to such conduct. (See also I.C. § 18-201(1), ignorance or mistake of fact which disproves any criminal intent). The burden is on the State to show that authority, express or implied, has not



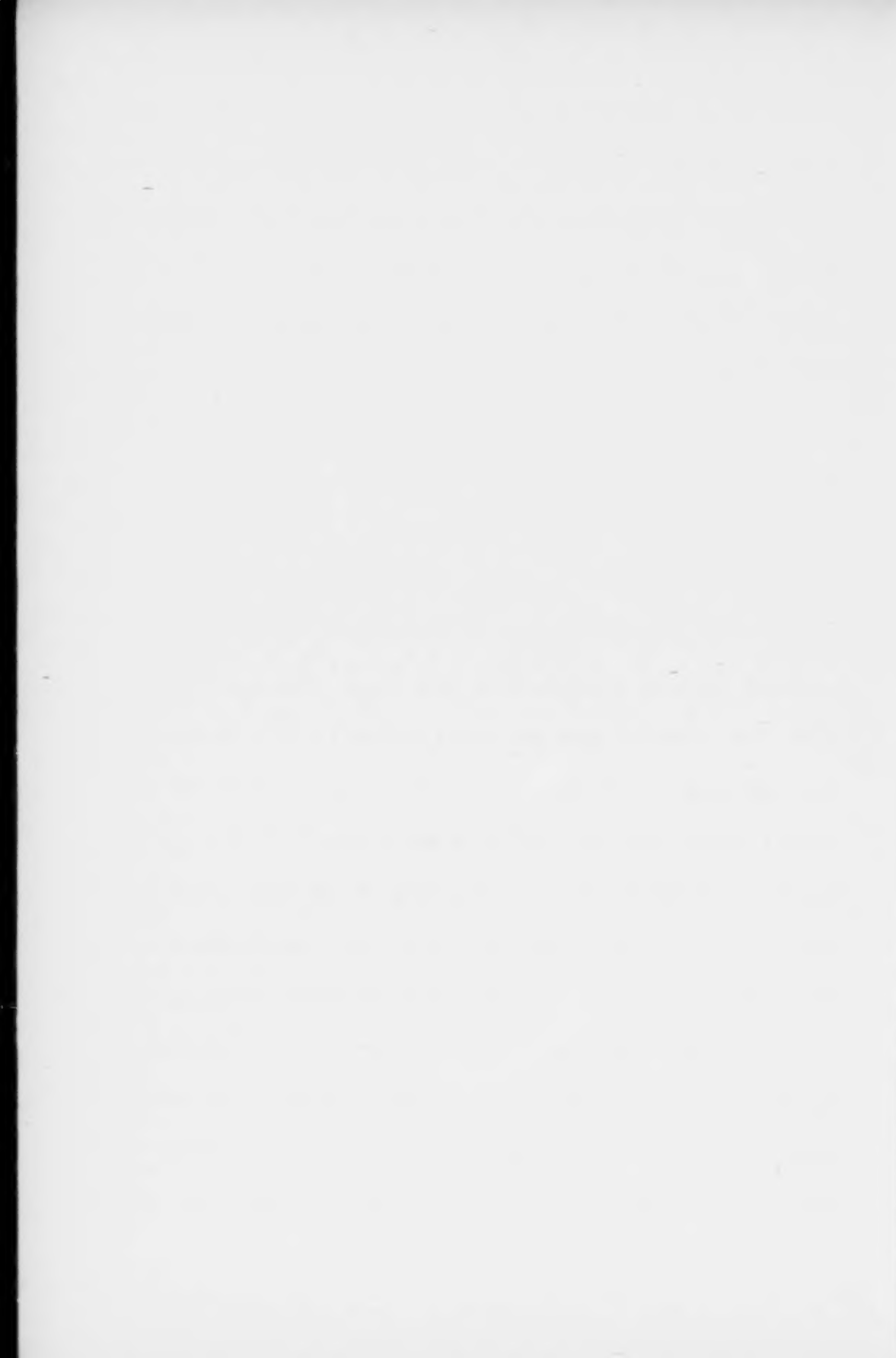
been granted. But when Grandma Moses knows she had no right to ask the child into her home because the parent would object and yet attempts to persuade or persuades the child to enter her home, then she may be found guilty under the law.

The evidence adduced at trial was more than sufficient to establish that Sindak had no authority, either express or implied, to persuade Jeremiah Bradshaw to leave the trailer, and that he knew that Jeremiah's parents would object to his actions, but attempted the proscribed act nonetheless. Indeed, at trial Sindak denied any conversation relating to persuading Jeremiah to leave the trailer and watch T.V. at his house. The jury is the final arbiter of such totally conflicting versions. Sindak had no inherent constitutional right to do what he attempted, nor would anyone else. Section 18-1509(1) does not fail for overbreadth.

The void for vagueness standard "requires that a penal statute define a criminal offense with sufficient definiteness that ordinary



people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Schwartz-miller v. Gardner, 567 F.Supp. 1371, 1372 (D. Idaho 1983), reversed in part on other grounds, 752 F.2d 1341 (9th Cir. 1984). Sindak has not alleged that any of the words of section 18-1509(1) are ambiguous as to meaning but that the statute, read as a whole, does not put a defendant on notice of what conduct is proscribed. However, "[i]n determining the sufficiency of a statute, the words of the questioned statute should not be evaluated in the abstract but should be considered with reference to the particular conduct of the defendant." State v. Lenz, 103 Idaho 632, 634, 651 P.2d 566 (App.Ct. 1982). In the context and circumstances of this case, the statute gave Sindak sufficient notice that attempting to persuade Jeremiah Bradshaw to leave his home without parental authority would subject him to the penalty of the law. As applied to Sindak, section 18-1509(1) is not void for vagueness.



THE MEANING OF "HOME"

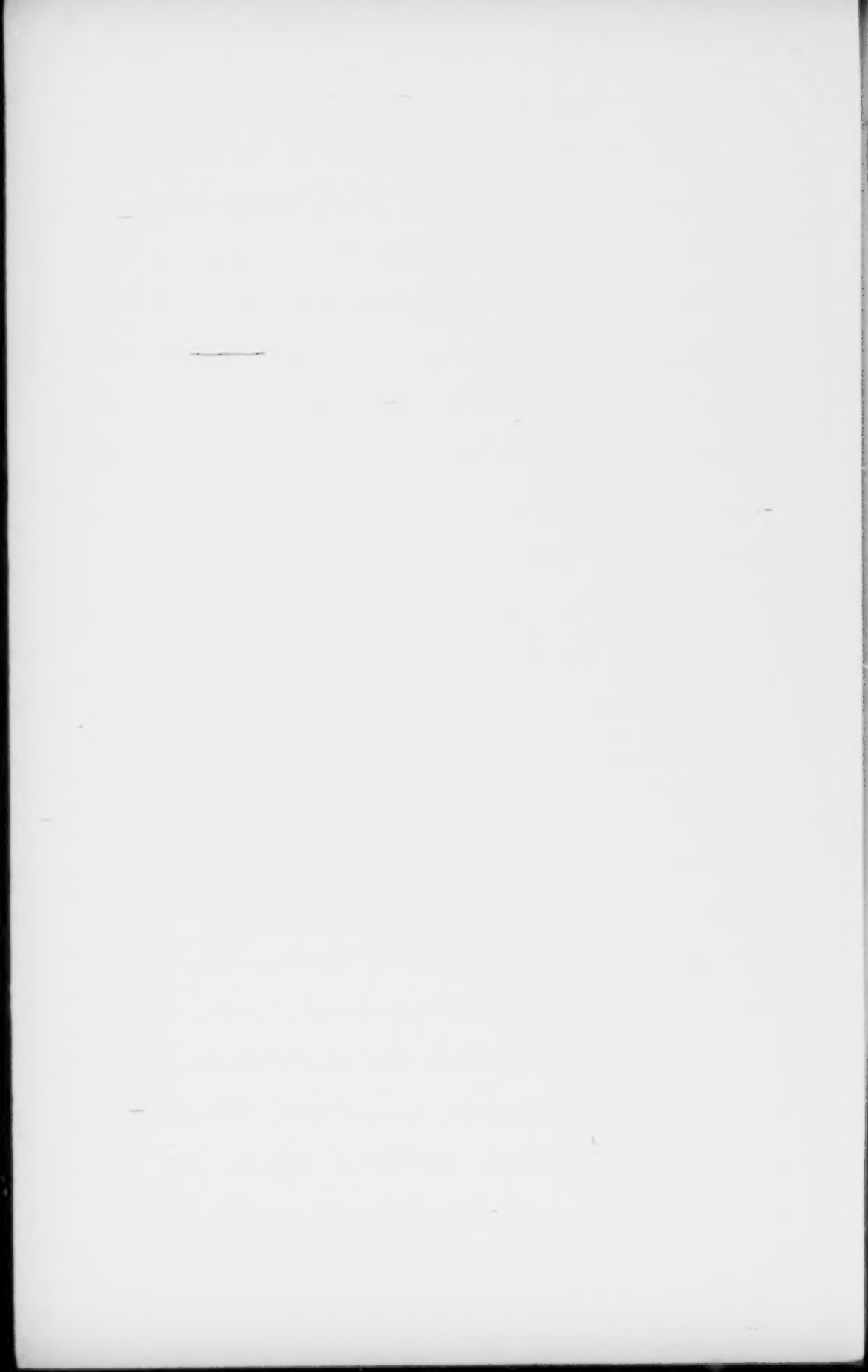
Next, Sindak argues that § 18-1509(1)'s reference to "home" should be narrowly construed to mean the fixed residence of the family, and that since Jeremiah Bradshaw was in a trailer just next to the Bradshaw residence at the time of the incident, he did not attempt to persuade Jeremiah to leave his home as required by the statute. The trial court judge issued a jury instruction which read as follows:

It is the law in the State of Idaho that buildings and other shelters, whether permanent or mobile, not connected to a dwelling but upon the same property and located close to it and used in conjunction with it take on the attributes of the dwelling and are considered a part of it.

Instruction Number 9. The judge ruled that in his view, the word "home" and the word "dwelling" were synonymous in that instruction.

Partial Transcript of Jury Trial, p.76, 1.4-5.

This court endorses the trial judge's view. In an analogous situation, the meaning of "home" for fourth amendment search and seizure questions has traditionally been defined

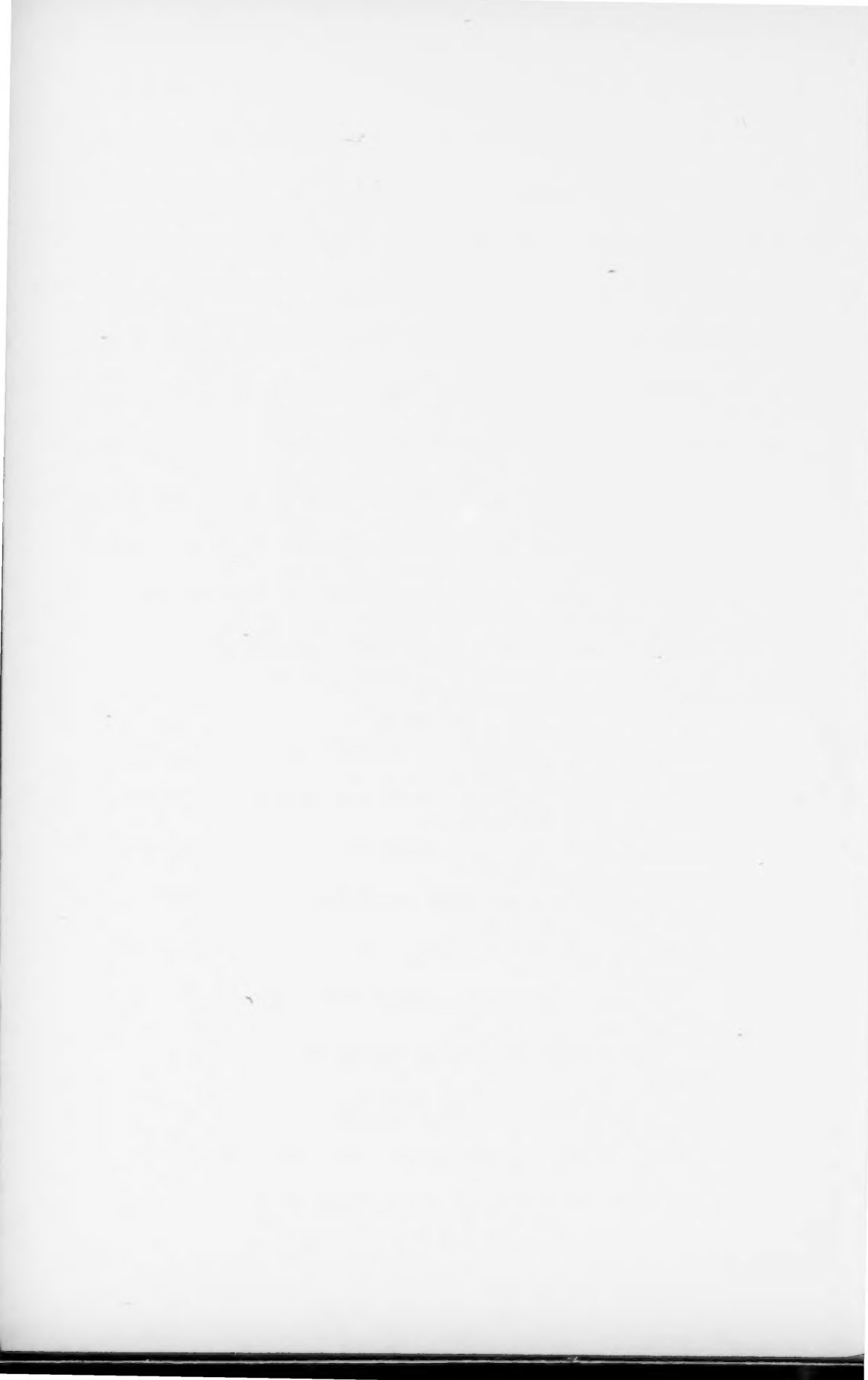


to include the curtilage. W. LaFave & J. Israel, Criminal Procedure § 3.2(c)(1985). The curtilage is commonly defined as "[t]he enclosed space of ground and buildings immediately surrounding a dwelling house." Black's Law Dictionary 346 (5th ed. 1969). In enacting section 18-1509, it is reasonable to assume that the legislature did not intend to limit the application of the word "home" only to the physical structure of a house, but also intended to extend the child protection statute to include any dwelling area immediately within the curtilage.

Here, the trailer in which Jeremiah Bradshaw was spending the night was in the yard of the Bradshaw residence, only ten to twelve feet from his parent's bedroom window. Partial Transcript of Jury Trial at p.42, 1.14-15. "Home," as used in section 18-1509(1)(a), certainly includes this circumstance.

LOCATION OF THE CRIME

Finally, Sindak argues that the state failed to prove at trial that the crime occurred



in Ada County. Both Richard Bradshaw and Carol Bradshaw, father and mother of Jeremiah Bradshaw, testified that they lived at 3460 Jullion Street in the City of Boise and that the incident in question occurred at that address. Partial Transcript of Jury Trial at 18 and 35. The trial judge ruled that such testimony was sufficient to establish that the crime occurred in Ada County. Id. at 54. This court agrees.

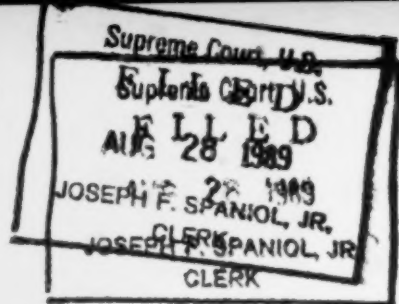
CONCLUSION

Accordingly, the conviction of Edward P. Sindak for the violation of Idaho Code § 18-1509 is affirmed. The case is remanded back to the Magistrate Division of District Court for enforcement of the Judgment.

IT IS SO ORDERED This 9th day of February, 1987.

ALAN M. SCHWARTZMAN,
District Judge

89-982



NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

EDWARD P. SINDAK, Petitioner

v.

STATE OF IDAHO, Respondent

ON PETITION FROM THE SUPREME COURT OF IDAHO

APPENDIX B TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

STEPHEN L. BEER
BEER & CAIN
302 West Idaho Street
Boise, Idaho 83702-6039
Telephone: (208) 336-2323
Fax: (208) 336-9060

IN THE DISTRICT COURT OF THE FOURTH
JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff/)	
Respondent,)	
)	
-vs-	)	Case No. 13652
	)	(55C-3018)
)	
EDWARD P. SINDAK,)	
)	
Defendant/)	
Appellant.)	
_____)	

PARTIAL TRANSCRIPT OF JURY TRIAL

BOISE, IDAHO

APRIL 24, 1986

CHARGE:

Enticing of Children, Misdemeanor.

APPEARANCES:

MARILYN SCANLAN, Boise City Prosecutor,
150 North Capitol Boulevard, Boise, Idaho,
appearing for and on behalf of the Plaintiff.

STEPHEN L. BEER, Esq., 302 W. Idaho
Street, Boise, Idaho, appearing for and on
behalf of the Plaintiff.

THE COURT: Please be seated. The date is April 24, 1986. It is now 10:40 in the morning. Calling for a trial to a jury, State vs. Edward P. Sindak. Are you Edward P. Sindak?

DEFENDANT SINDAK: Yes, I am.

THE COURT: The Defendant is present with his Attorney, Mr. Beer. The State's Attorney is here and I am informed by the Clerk of the Court that a Jury Panel is present and accounted for and awaits our call, and I have handed to the parties the proposed Pre-Voir Dire Instructions. Does the State have anything for me at this point?

MISS SCANLAN: Yes, Your Honor. The State would at this time make a final Amended Complaint.

THE COURT: May I see it, please?

MISS SCANLAN: if I might approach?

THE COURT: Have you been given a copy of this Amended Complaint, Mr. Beer?

MR. BEER: Your Honor, I have.

THE COURT: Have you read it?

MR. BEER: Yes.

THE COURT: All right. I've been handed an executed Amended Criminal Complaint in this case and in looking at the original Complaint in this action, which was filed September 13, 1985, it appears to charge the same offense and same code number, the dates the date, location is the same . . . the State now only alleges one child, in the original it was two, and there's a different description of where the child was located at the time of the alleged conduct. Well, does the City wish to speak to the Amended Complaint?

MISS SCANLAN: No, Your Honor. I think that it's proper to amend at this point.

THE COURT: Mr. Beer, go ahead, what do you want to say in response, if anything?

MR. BEER: Your Honor, I would object to the late amendment of Complaint. Secondly, I don't think it charges the crime.

THE COURT: Why do you think that?

MR. BEER: Your Honor, the statute is very specific that it has to be an enticement from the house; this is a trailer.

THE COURT: I would have to say, Mr. Beer, that if that trailer is within the curtilage of the home, I would consider that to be the home. Although I haven't heard the evidence yet I have read your motion to limit evidence and if I understand what you believe the facts to be, apparently what the State is claiming is that this child or children were sleeping in a camp trailer on the property of the home. If those are the facts I think that in terms of that statute and what I discern to be the purpose behind that I would construe that to include that factual circumstance.

MR. BEER: Your Honor, I do have a motion to dismiss which I'll present at the end of the State's case.

THE COURT: Now, this other thing -- so on that basis I would overrule your objection on that grounds. What was the other one?

MR. BEER: That simply that it's a late filing we object to

THE COURT: Okay.

MR. BEER: the amendment of Complaint.

THE COURT: I do not automatically say, "no" to that objection. The reason I'm going to overrule your objection is that the allegations made in the Amended Complaint fit the recited proposed facts in your motion to limit the evidence precisely so I don't think I can find that the changes in the alleged facts have caught you by surprise. You apparently have known the State's position as far as the facts are concerned for quite some time; such that you could have filed that earlier motion. Are you claiming surprise?

MR. BEER: No, Your Honor.

THE COURT: Or any kind of unfair advantage or other prejudice?

MR. BEER: No, I think the Amended Complaint basically states what happened and whether it states a charge is

THE COURT: Yes.

MR. BEER: up to the Court.

THE COURT: Okay. Have I addressed all
the elements of your objection?

MR. BEER: Yes, Your Honor. There will be
one more objection to the Amended Complaint in
that there isn't an intent. In other words,
the Complaint and the statute just say, "That
if you entice a child away from its house or
school." and, the difficulty I see with that
is that there is no intent, like in lieu

. . . .

THE COURT: Right.

MR. BEER: and say this is intent
to do something bad.

THE COURT: That's right. There's -- I
don't -- I agree with that. I don't see it in
the statute. It seems to be a prohibited act,
just like speeding; can't do it even if
innocently done. I don't know that that's
grounds to dismiss though. I think the
Legislature has defined an act -- it's I think
it's a reasonable person can discern from the

fact of it what is prohibited and it seems to serve a legitimate and proper public concern under the police power. I'm inclined to let it stand. So that motion -- or that objection is overruled also. All right. Then the Amended Complaint and I'll label it "Amended" is entered of record at this time. Have you been given a copy?

MR. BEER: Yes, Your Honor, I have.

THE COURT: All right. Now, is there anything further from the State?

MISS SCANLAN: No, Your Honor.

THE COURT: I won't ask for any objections to the Pre-Voir Dire Instructions because I'm going to have my Clerk redo the charging instructions -- or the proposed instructions for a moment, do you have anything you want to raise with me as a preliminary matter that's appropriate?

MR. BEER: Your Honor, the only thing would be a motion to exclude witnesses even during Voir Dire.

THE COURT: Well, so ordered. Well, does the State object to that?

MISS SCANLAN: Your Honor, the State would be asking to allow at least one of the child's parents to be present in the courtroom while he testifies. I think the rules

THE COURT: Yes, I'm aware of the

MISS SCANLAN:allows for that.

THE COURT:rule on a friendly face for children. How old's the child witness?

MISS SCANLAN: He just turned ten.

THE COURT: All right. Will there be more than one child witness?

MISS SCANLAN: No, there will just be one.

THE COURT: Do you have any problem--or basis to challenge that, Mr. Beer?

MR. BEER: Your Honor, if--no, the only thing I'd request is if the parent is going to accompany the child into the courtroom I would ask that testimony occur first. I don't know if there would be any repetition based upon what one witness says and following up with that, but if the parent has testified and is not going to testify further I have no problem with a friendly face.

THE COURT: So you would like--you're asking then that the Order be that the--who testifies first between the parent and the child?

MR. BEER: Well, all I'm saying is--I guess the parent would have to testify first and that the parent would not testify again and then the child could come in and testify.....

THE COURT: Oh, I see.

MR. BEER: and the parent could be there.

THE COURT: I see. What's the City think of that?

MISS SCANLAN: I don't mind--I don't mind putting one of the parents on first and then having the child and then letting that parent stay.....

THE COURT: Okay.

MISS SCANLAN:but I would like to reserve the right to recall that parent if I think it's necessary on rebuttal.

THE COURT: Yes, that's almost a necessity.

MR. BEER: Well, then I'd object to having a parent present because I

THE COURT: Are you going to put both parents on?

MISS SCANLAN: Yes.

THE COURT: Are there any other persons under the rule that are available to you today that could serve as a friend that would be satisfactory?

MISS SCANLAN: The only other person that we have here is a younger brother.

THE COURT: Yes. Well, I guess we've got a collision of two rules here and I believe I understand the purposes that both rules serve. We certainly don't want witnesses instructing each other on the testimony and yet there's a clear public purpose--a legitimate public purpose behind a child having a friendly face in the courtroom and on balance comparing the two I find that the interest of the child prevails, and therefore the State will be allowed to have a parent in the courtroom. I would ask that parent testify first and then

parent after being in the courtroom when the child testifies I will allow that parent to be available as a rebuttal witness. Anything else, Mr. Beer.

MR. BEER: No, Your Honor. Well, yes, there is one thing and I think this is just for the record. I had a motion in limine which I think is moved (sic) at this point from what the Prosecuting Attorney has indicated to me, so

THE COURT: Is that right?

MISS SCANLAN: I will not be using those witnesses in my case and (sic) chief.

THE COURT: Okay. Will you be trying to solicit the objection that evidence though from other witnesses that Mr. Beer's concerned about?

MISS SCANLAN: I don't understand.....

THE COURT: Well, Mr. Beer's concerned about an event he claims took place two or three years earlier and you're saying you won't call those witnesses. I'm not so sure Mr. Beer's is concerned about any witnesses, he's

concerned about the evidence itself.- Are you not going to attempt to produce that two or three year old evidence no matter where you would get it?

MISS SCANLAN: In my case and (sic) chief?

THE COURT: Well, in your case and (sic) chief.

MISS SCANLAN: I wouldn't--I will not be using that evidence in my case and (sic) chief. I don't know, you know that the Defense....

THE COURT: I understand that.

MISS SCANLAN:will be.

THE COURT: You can't be held on that yet, but in your case and (sic) chief you're not

MISS SCANLAN: No.....

THE COURT:going to go into the things.....

MISS SCANLAN:absolutely not in my case and (sic) chief.

THE COURT:addressed in his motion in limine.

MISS SCANLAN: Pardon me?

THE COURT: You will not be going into your--their material.....

MISS SCANLAN: No.

THE COURT:he objected to in that motion?

MISS SCANLAN: That's right.

THE COURT: All right, okay. Does that satisfy you, Mr. Beer?

MR. BEER: That's fine.

THE COURT: Did you have any other preliminary matters?

MR. BEER: No, Your Honor.

THE COURT: I thought you said you had a motion to dismiss?

MR. BEER: Your Honor, I do, but only after the State's case.

THE COURT: Oh, all right. Well then the only remaining matter then is the--to settle on the proposed Pre-Voir Dire Instructions and I'm taking a recess now my Clerk will prepare a new instruction consistent with the Amended Complaint and I'll have her bring that out to you and give it to you as a substitute

instruction for the one you already have. It shouldn't take long. Court is in recess.

MR. BEER: Thank you, Judge.

(Court off record)

(Court on record)

THE COURT: All right. I've had my Clerk hand to you now the charging instructions for the Amended Complaint. Has the State received your copy of the proposed Pre-Voir Dire Instructions?

MISS SCANLAN: Yes, I have, Your Honor.

THE COURT: Do you have any objections to them?

MISS SCANLAN: No, Your Honor.

THE COURT: Has the Defense received your copy of the proposed Pre-Voir Dire Instructions?

MR. BEER: Yes, Your Honor, and I do have an objection to Amended Instruction #2 and I think we've already.....

THE COURT: To the Amended Complaint?

MR. BEER: That's basically it.

THE COURT: Yes. Is your objection based upon the fact that the Complaint's been amended?

MR. BEER: The Complaint's been amended and I don't think it states a charge but I think we've already argued and you've already ruled on it.

THE COURT: Yes. Okay. That would be the same ruling then. All right. Anything else for me to decide before we begin the Jury selection?

MR. BEER: I don't believe so.

MISS SCANLAN: I don't think so.

THE COURT: Okay. The Clerk of the Court will please bring in the Jury Panel. Have you received your sheets?

MISS SCANLAN: Yes, Your Honor.

MR. BEER: Yes, Your Honor.

THE COURT: Would it be better if I read the Pre-Voir Dire Instructions. Let's see. Yeah, I'll be doing them before you start questioning, okay.

MISS SCANLAN: Judge, do you want us to question every--all of the perspective (sic) Jurors as a group first.....

THE COURT: Yes, and.....

MISS SCANLAN:and then come back and.....

THE COURT:then we'll go to individuals.

MADAM CLERK: All rise.

(Pause)

THE COURT: Thank you. You may be seated. The Jury Panel is now present. Members of the Jury Panel, the Clerk of the Court will now call your names, please answer when your name is called so we can record your presence and give you credit for service today.

(Roll call of Jury)

(Jurors Sworn)

(Jury Instructions)

(Voir Dire recorded, but not transcribed)

(Court off record to change tape)

(Court on record)

(Voir Dire recorded, but not transcribed)

(Jury Panel Selected and Passed)

(Jury Instructions)

THE COURT: Has the State read the proposed Pre-Trial Instructions?

MISS SCANLAN: Yes, I have, Your Honor.

THE COURT: Do you have any objections to them?

MISS SCANLAN: No, Your Honor.

THE COURT: Has the Defense read them?

MR. BEER: Yes, Your Honor.

THE COURT: Any objections.

MR. BEER: Yes. We object to Instruction #6 on the same grounds as we talked about this morning, and, in addition on the ground of state.....

THE COURT: Okay. Now Instruction #6, the first grounds is you believe it does not define that--a crime?

MR. BEER: That is correct.

THE COURT: Okay. That objection is overruled, unless you want to address it further.

MR. BEER: No, Your Honor, what....

THE COURT: Okay. Same ruling then.

MR. BEER: Okay. I'd refer the Court's

attention to State vs. Lopez, which is 98 Idaho
581, that the statute in that particular case
did not provide fair notice or warning of what
was a criminal act and I think the same applies
to Instruction #6.

THE COURT: Any further objection to #6?

MR. BEER: No.

THE COURT: Okay. Any other objections to
the Pre-Trial Instructions?

MR. BEER: Yes. Instruction #7, Your
Honor, the second sentence it says, "Joint
opiation", I think that should be, "Joint
operation". I don't want the Jury to become
confused that.....

THE COURT: Oh my gosh, you're right.

MR. BEER:we're using
(indiscernible) is fine. I.....

THE COURT: All right. So corrected.

MR. BEER: And also I think that this
particular statute would require a specific
intent so I would object to that portion of

Instruction #7 where it says, "To constitute criminal intent, but is not necessary that there should exist an intent to violate the law in the next proceedings sentence."

THE COURT: And you believe that the statute charged here requires a specific intent?

MR. BEER: I think--actually, I don't think the statute, as I've mentioned, has any intent element in it but I'm sure--my position is that it has to have a specific intent element, so I'm objecting to.....

THE COURT: What kind of specific intent?

MR. BEER: The specific intent to break the law. I don't think it's like speeding or a DUI. I think it would have to be with the intent to arouse the

THE COURT: Yes.

MR. BEER:lust or whatever it may be.

THE COURT: All right. I understand what you're saying. Does that State wish to respond to that objection?

MISS SCANLAN: I don't think

(indiscernible) specific intent.

• (Indiscernible) if its' clear like this the
• action is intended to (indiscernible).

THE COURT: Objection overruled. Any
other objections to the Pre-Trial Instructions?

MR. BEER: No, Your Honor.

THE COURT: Okay. Does the State wish to
raise anything with me now before I call the
Jury in?

MISS SCANLAN: No, Your Honor.

THE COURT: Does the Defense?

MR. BEER: No, Your Honor.

THE COURT: Okay. Here is the order of
procedure then. I will call the Jury back, I
will give them the Pre-Trial Instructions,
opening statements and the presentation of the
evidence. All right. Will the clerk please
return the Jury.

MR. BEER: Your Honor?

THE COURT: Yes.

MR. BEER: I'm going to be heard on weight
but reserving my opening statement, if that's

.....

THE COURT: Thank you.

MR. BEER: Thank you.

THE COURT: I'll simply ask you that in
front of the Jury.

MADAM CLERK: All rise.

THE COURT: Thank you. Please be seated.
The Jury is present and accounted for. The
parties continue to be present before the
Court. Members of the Jury I now give to you a
set of instructions called the "Pre-Trial
Instructions". These instructions are given
just before the opening statements and the
evidence is presented. There are Instructions
5 through #8.

(Pre-Trial Instructions recorded, but not
transcribed.)

THE COURT: That completes my second set
of instructions to you. Before the evidence is
presented the Attorneys will have an
opportunity to present to you a brief

statement. This statement is to give you some orientation and guidance in what the Lawyers think the evidence is going to show in this case. These are called "Opening Statements", and they are to assist you to better understand the evidence as it unfolds from the witnesses or other evidence. The State's Attorney can present her opening statement now and then the Defendant's Lawyer can give his now or save his and give it later in our proceedings. Go right ahead.

MISS SCANLAN: Thank You, Your Honor.

Members of the Jury, the case that you're going to hear today is one involving an incident that took place on August 18th of 1985. Carol and Richard Bradshaw will be here to tell you that they were at home with their three children; Danny, Matt (phonetic) and Jeremiah and Jeremiah had a friend sleeping over and his name is Craig Hines (phonetic). Jeremiah and Craig were sleeping in the family trailer which is parked just outside of the home in the back yard. They have a cement area, a cement slab

where they have a--where they keep their trailer and they have a camper that sits there and another smaller utility trailer. And, Jeremiah and Craig were out in the camp--in the trailer and they received a phone call late that evening from the Defendant, Mr. Sindak, wanting one of the boys to come over and be paid for some yard work that he's done for him. The Defendant, Mr. Sindak, lives directly behind the Bradshaw's. Mr. Bradshaw explained to Mr. Sindak the children were asleep, in fact, one of the children was ill, and he wasn't going to let anybody go over to his house. A short time later, approximately 11:30--sometime between 11:30 and midnight Mr. and Mrs. Bradshaw could hear a voice outside their window. They'll tell you that their bedroom window is eight to ten feet from this trailer that's parked on the cement slab in the back yard. They heard voices, they were at the window listening trying to hear what was being said and Jeremiah Bradshaw will tell you he was in the trailer and then he heard somebody

knocking at the door calling his brother Matt's (phonetic) name. He told him that Matt (phonetic) wasn't there and he wanted to know who it was, and Jeremiah looked out the window and he saw the Defendant, Mr. Sindak, there. There was some conversation and the Defendant asked if he could come in, asked if they would come over to his house and watch television and they said, "No". The Defendant kept saying, "Be quiet, don't wake your parents," and then asked, "Why didn't they come out and go over and watch TV." About that point, as the Defendant was coming around one side of the trailer Mrs. Bradshaw who was furious at that point came storming around the side of the house, and they have a low fence that divides this flat area from the rest of their yard. She came over this fence and was startled--they were startled to see each other and at that time the Defendant walked onto the sidewalk, which is not too far from where they were and said, "Good evening", and walked away. That's essentially the State's case. Officer Keith

Potter who was the Investigating Detective will be here to tell you that he talked to the victims in this case and discuss briefly with you that investigation. Thank you.

THE COURT: Mr. Beer, do you wish to address the Jury now or save your remarks until a later time?

MR. BEER: Your Honor, if I may reserve it, I'd appreciate it.

THE COURT: All right, thank you. The State will please call its first witness at this time.

MISS SCANLAN: Thank you, Your Honor. The State would call Richard Bradshaw.

THE COURT: Is that one of the witnesses in the back?

MISS SCANLAN: No, Your Honor.

MR. BEER: No, it isn't.

(ROBERT BRADSHAW, was sworn).

DIRECT EXAMINATION

BY MISS SCANLAN:

Q Good afternoon. Would you state your name and spell your last name for the record

please?

A Richard Bradshaw, B-R-A-D-S-H-A-W.

Q Mr. Bradshaw, where do you reside?

A In Boise at Jullion, 3460 Jullion Street.

Q And that's in the City of Boise?

A Yes.

Q Mr. Bradshaw, has--were you living at that 3460 Julian Street address on August 18th of 1985?

A Yes.

Q You do recall being at home that night?

A Yes.

MISS SCANLAN: If I might approach the Clerk, Your Honor?

THE COURT: Yes, go ahead.

MISS SCANLAN: I would ask that this be marked as State's Exhibit No. 1.

(State's Exhibit 1, Marked).

MISS SCANLAN: (Inaudible).....

THE COURT: That's fine, thank you.

Q Mr. Bradshaw, I'm going to set this here (indicating) for just a moment. Do you

recall who was at home with you on that particular night?

A The entire family was home; my wife and my daughter, Matthew, and my twins, Jeremiah and Danny, and we also had a visitor.

Q And who was that?

A Craig Hines (phonetic), he was staying over with the twins.

Q How old are your children?

A The twins are ten and Matthew is fourteen and my daughter is seventeen.

Q The twins are--what are the twins' names?

A Daniel Bradshaw and Jeremiah.

Q On that particular night did you receive a phone call?

A Yes.

Q Can you describe to the Jury what took place?

A Okay. At approximately 10:30 I got a tel--the phone was ringing and I was in bed and I got out of bed and went to the other room and Ed Sindak was on the phone wanting to talk to

my oldest son, Matthew. Matthew had been helping him take care of his lawn and doing things and he wanted to give him some money. And I told him that Matt (phonetic) was asleep and he wanted to know how the rest of the family was and I said okay, except Danny was real sick. I said that he was pretty disappointed because him(sic) and Jeremiah had a friend over and they were going to sleep in the trailer and that Danny had started throwing up and he was in the house and he was real sick and he said, oh, that was too bad, you know, and he was--acted concerned over the boy. And, we talked for a second and I think that was about it.

Q Okay, was it a friendly conversation?

A Yes.

Q Okay, had you spoken with this person before?

A Yeah, Ed and I had talked many times. I'd been over to his house and we'd visited and we was getting along real good. He had called us, I don't know, four or five times; I'm

guessing, you know, three times, late in the evenings at 10:00 like this wanting to talk to Matt (phonetic) or wanting Matt (phonetic) to come over and it had kind of bothered me but not enough that I was going to say anything. I hadn't said anything to Ed about it. And, so it was a good friendly relationship that was.....

Q When you talk about Ed Sindak are you referring to the gentleman on my left?

A Yes.

MISS SCANLAN: If I might approach the witness, Your Honor.

THE COURT: Yes, go ahead.

Q Mr. Bradshaw, I'm going to direct your attention to a diagram here (indicating). Would you look at this (indicating) diagram and familiarize yourself with it?

A Yes.

Q Do you recognize that this (indicating) represents?

A Yes, this is--this here (indicating) is our house, this (indicating) is the front lawn,

this (indicating, is our back lawn, this (indicating) is a chain link fence. This (indicating) is a wooden fence about six feet tall, and this here (indicating) is where our trailer was sitting and there was a camper sitting in here (indicating), and this here (indicating) is our bedroom window where my wife and I slept about--whenever we allowed the kids to sleep in the trailer in the summertime we'd leave the back window wide open. It's about ten feet from the trailer, the window is, and we leave that wide open so we can keep them calm, make them be quiet and then also to just kind of watch them.

Q Okay. With this (indicating) marking pen could you note--maybe you can help me move this (indicating).

A Me?

Q You can write on (indiscernible).

A Okay.

Q Can you note for the Jury what this (indicating) green square represents? Let me

just draw an arrow underneath and tell them what that (indicating) is?

A Okay. This (indicating) right here (indicating)?

Q Uh-huh.

A It's the trailer.

Q Now, that's where Jeremiah was asleep, is that right?

A Yes. This (indicating) is where him (sic) and Craig Hines (phonetic) were sleeping.

Q Okay. Now, this (indicating) you indicated was a six foot wooden fence, is that right?

A Uh-huh.

Q That (indicating) red.....

A Yes.

Q Would you look at--now the dots that.....

A I may--.....

Qgo along the....

AI may be--I may be wrong on the six feet, I'm guessing that.

Q Okay.

A It's--it's an.....

Q Okay. Approximate?

A I haven't measured it, no.

Q These (indicating) dots that run along the edge of your property, is that correct?

A Yes.

Q What is that (indicating).

A That is a rail fence; it's two feet tall. It stands about--about like so (indicating). It has two (indiscernible) on it that you can step over, it's just for looks; it's not to hold anything out.

Q Now, the area where this (indicating)--what you've marked as a trailer, would you describe that area for us?

A Well, this (indicating) is a cement slab back here (indicating) for parking cars, utility vans; something like this here (indicating) and I had the trailer there (indicating) and a small camper and I had another little utility trailer here (indicating). There's double gates right here (indicating) in the middle of it which I leave

open for them when they're staying out so they can come in the back door or

Q Now, you indicated this (indicating) area between these (indicating) two green marks.....

A It's the window.

Q The bedroom window. And this isn't a drawing--it's not to scale is it?

A No, it's not to scale. It's just a (indiscernible)

Q Okay. Now, Mr. Bradshaw, did anything else happen that night that was out of the ordinary?

A We went to bed after talking to Ed for five, ten minutes, you know, approximately, and--and I was almost asleep. I was doosing--dozing off and my wife nudged me and said that something was bothering me--she could hear somebody outside talking. She thought to--to our son and Craig. And, she was very concerned over it so I went to the window and I listened for a little bit and I could tell by the voice I could tell it was Ed that was out there

visiting with the boys. I listened for a few minutes and I thought, "Well, he's just walking by." And I went back and laid down in my wife and my wife she got nervous and she got up and she went over there and listened for a little while and pretty soon she got upset. She said, "I want you to go out there." And I said, "Well, you know, he can walk by if he wants to." She said, "I don't think it's that." She said, "He's been out there too long". And so I got (indiscernible), by this time she went outside and I was sitting there listening and I was getting concerned because to me it sounded like Ed was--was holding his voice low like he was talking real low and--and I didn't--I didn't really know what to think of it. I was getting concerned but I didn't--I really didn't know what to think of it at that time.

Q Okay. Did you go outside?

A No I didn't.

Q What was the next thing that happened?

A Well, the next thing that happened is my--I--my wife went into the trailer and then I

started outside and as I was coming out I was--met her. I can't remember just where it was but I met her and the children coming back in the house and I sat down with my boys; with them, and they acted real scared. And this was the first time that I started getting a little upset because Jeremiah acted really really scared and I couldn't understand why. And I just--I said, "Well, you know, what was happening?" My wife was very, very upset and very mad. And then Jeremiah.....

Q Did you talk to the boy?

A Yes, then Jeremiah sat down and told me what he--what had been going on out there, what he--and that really bothered me and I couldn't sleep very well the rest of the night.

Q Did you put the boys to bed at that time?

A We put them to bed but they--they didn't sleep well. They didn't go to sleep for quite awhile. They were--that was the thing that really upset me was then that I started realizing that they were really scared and....

Q Had you allowed the children to sleep in this trailer before this particular evening?

A Yes, we had. I don't know how many times, but probably six times through the summer.

Q And so Jeremiah had slept out there before?

A Oh yeah.

Q And who was the other little boy that was with him?

A Craig Hines (phonetic).

Q Okay. And does he live here (indiscernible)?

A No, that--the reason they were staying out there is he was moving that week to Denver and they had been best buddies and so he had been spending about three days with us and that was their last night; he was leaving the next morning I--if I believe--I believe it was and so that was kind of--we was going to let them stay out there because they wanted to and they were thinking about--oh, they were talking about staying up all night and--and they--at

that age they did a lot of talking, they never made it but.....

Q Okay. Are you--do you have legal custody of your children?

A Yes.

Q And you're their custodial parent?

A Yes.

Q You are married to Carol Bradshaw?

A Yes, uh-huh.

Q And Jeremiah is your child?

A Yes.

Q And he resides with you?

A Yes.

Q Did you give permission to Mr. Sindak to talk to your children that night?

A No. He--he wanted to talk to them and I said--I told him, no, I didn't want to wake them up because they were asleep, and that.....

Q Did you ever give him permission to come onto your property to speak with the children?

A No I never had--I just treated it like neighbors. He talked to us, we talked to him

and I think Ed had walked by our house a few times. I--I borrowed things from him. We was taking care of his yard.

Q Uh-huh. On this particular night did you give Mr. Sindak permission to take the children to his home?

A No. I had told my boys that--a long time ago that they were not to go into anybody's home in the evenings. They were to stay at home.

Q Thank you.

MISS SCANLAN: I have no further questions.

THE COURT: Cross-examine?

CROSS EXAMINATION

BY MR. BEER:

Q Isn't it true that Matt (phonetic) the next day went over to pick up his lawn mower and money?

A He went over the next--it might have been the next day, yes.

Q And isn't it true that he went over accompanied not by you or your wife?

A He went with another friend.

Q As I understand your testimony, you found out what was happening--or what you alleged to have happened the night of August 18th, or the early morning hours of August 19th, is that correct?

A The 18th, that evening at--by 12:00. Between 11:30 and quarter to 12:00 is when this took place.

Q Do you have a child who delivers papers in the neighborhood?

A Yes we do.

Q And which child is that?

A We have all three of our boys working in that route.

Q Since August 18, 1985 isn't it true that the children have come over to collect from Mr. Sindak for the paper?

A Only my daughter who is seventeen and only Matthew who is fourteen, and we told Matthew that if he went over there he had to have a friend with him.

Q I'd like to talk to you about your drawing. Is Telfair a street?

A Yes, Telfair--Ustick runs up here (indicating) about a block-and-a-half away, Jullion here (indicating). Telfair runs along this (indicating) way and another street here (indicating) and then it deadends over here (indicating).

Q Now, on the night in question, wasn't the camper located where you have the trailer and then the house trailer next to the left on the picture this way, and then the utility trailer?

A I don't understand what you.....

Q Well, you had the trailer, and it appears to be on the far right-hand side? It'd be on, I guess, the west side?

A The west side, yes.

Q Okay. And it's your recollection that that was on the far west side and then as you go east you had the utility trailer and then a camper?

A No, we had the camper next to that (indicating) and then a utility trailer.

Q Is there--or had you ever had the trailers arranged so that the camper was on the far west and then you had the house trailer in the middle and the utility trailer on the east?

A We have the trailer now so it's up against--we have the trailer so it's up here (indicating) against this (indicating) wooden wall now.

Q All right. But going back to the night in question, you're positive of the location of the.....

A Yes.....

Qtrailers?

Abecause I took them out and moved them for the reason that a person could not--the way it was set up before a person could stand between the trailer and the camper--they could stand here (indicating) and it was almost impossible to see them.

Q What.....

A I switched this around, put a trailer over here (indicating) so that you could not stand on this side. If you were going to stand by this (indicating) trailer you'd have to stand on this (indicating) side where I could see you.

Q So that evening--or at least part of that evening you were concerned about the possibility of somebody coming up to the trailer, would that be fair to say?

A No. I was not concerned. I--I put my trailer there (indicating) just--there was no reason why I parked it there, I just did.

Q I thought earlier--I thought you just indicated that the reason for doing was that you wanted to have a clear vision.....

A That's right, afterwards.

Q Oh, this was afterwards.

A Afterwards.

Q Okay.

A Yes. I moved that trailer afterwards so that if anything like this ever happened again I would be able to see an individual.

Q Now, from the little fence that you talked about that was just a ornamental fence, didn't keep anything in or out, how--excuse me, how far is that fence to the street, Telfair?

A That little fence goes right up to the sidewalk.

Q Okay. Could you tell me how far you think it is?

A From the sidewalk to the street?

Q No, from the little fence to the sidewalk?

A Well, the posts touch the sidewalk because they go in the ground and that's anywhere--it depends on where it's at because the fence goes around and it curves. They're from anywhere from six inches from the edge of the sidewalk to on the back part here (indicating) I have one, you know, even where it's almost touching; it's about an inch from the sidewalk.

MR. BEER: Your Honor, may I approach the....

THE COURT: Yes.

Q I may be confusing you and I may be confusing myself, I'm not sure which, but if--is this (indicating) a fence right along here (indicating)?

A That's a chain link fence, yes.

Q Chain link, okay, I'm sorry. Okay. Then from the chain link fence to the sidewalk or to the street how far is that distance, would you estimate?

A Approximately twenty-five feet.

Q Okay. So we have a--distance of about twenty-five feet.....

A Uh-huh.

Qand that would be from the chain link fence at the north end of the property to the street?

A To the street, yes.

Q And the sidewalk is how wide?

A Approximately three feet.

Q Okay. So you have a three foot sidewalk, so we've got a distance of about twenty-two feet maybe from this (indicating) fence to the sidewalk?

A Approximately, yes.

Q Does the trailer overlap onto the sidewalk at all?

A The trailer doesn't, the tongue, if you want to call that part of it comes out over the--maybe over the sidewalk of maybe a foot, maybe.

Q So, in your drawing--and it looks as if the little ornamental fence that you have right around here (indicating) marks more or less the boundaries of the sidewalk? Is that correct?

A Yes, yes. That pretty fair, yes.

Q What is the size of your trailer?

A It's a --I believe it's twenty-two feet.

Q ...You indicated that Mr. Sindak had called that evening, have you told us everything that was said by you and by him during that conversation that you can recall?

A ...As much as I can recall, yes.

Q Did you relay the message to Matt (phonetic) that Mr. Sindak had called and that

he should go over and pick up his lawn mower and money?

A No I hadn't because he was asleep.

Q Did you thereafter?

A That evening?

Q Not that evening but at anytime thereafter?

A The next day I went over--or the next morning I told Matt (phonetic), I says, "If you want your money, you'd better go over and get it from Ed and I want you to go with someone else, because ..." I said, "... I don't know how to handle this situation, I'm going to have to confront Ed on it and I--I don't want you going over there anymore and I don't want you doing the law." And....

Q Okay. So you subsequently told him that Mr. Sindak had called and that his money was ready at Mr. Sindak's house?

A Yes.

Q And you have told the Jury everything that occurred during the conversation that you had with Mr. Sindak that evening?

A As much as I can remember, yes. I don't--I can't remember leaving anything out.

Q ...Now, was your wife furious when she walked out of the house that evening?

A Was she upset?

Q Upset, furious?

A Or mad?

Q Right.

A Yea, she was very upset about the fact that someone was out there talking.

Q And did your wife go out to confront the person that was talking to the boys?

A Yes.

MR. BEER: No further questions, thank you.

THE COURT: Redirect?

MISS SCANLAN: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MISS SCANLAN:

Q Mr. Bradshaw, did you know who was out there?

A Yes, I did.

Q Did your wife?

A Yes. ...My wife could not see him and neither could I but I--Ed and I had talked many times; I knew his voice.

Q Thank you.

MISS SCANLAN: I have no further questions.

MR. BEER: No further questions, thank you.

THE COURT: Thank you. You may step down.
Next witness?

MISS SCANLAN: The State would call Carol Bradshaw.

(CAROL BRADSHAW, was sworn).

DIRECT EXAMINATION

BY MISS SCANLAN:

Q Would you state your name and spell your last name for the record, please?

A My name is Carol Bradshaw,
B-R-A-D-S-H-A-W.

Q And where do you live?

A I live at 3460 Jullion Street.

Q In the City of Boise?

A Uh-huh.

Q Are you married to Richard Bradshaw?

A Yes, I am.

Q Do you have any children?

A We have four.

Q What are their names and ages?

A Roxie (phonetic) is sixteen, Matthew is fourteen, and I have twins, Jeremiah and Daniel; they're ten.

Q Mrs. Bradshaw, were you at home on August 18, 1985?

A Yes, I was.

Q Was your whole family at home that night?

A Uh-huh.

Q Did anything unusual happen that night?

A Yeah.

Q Can you tell the Jury what happened?

A About 11:30 we were in bed and I heard somebody call Matthew's name outside our bedroom window, and I got up and went to the window and listened and I--the gentleman left the door of the trailer and went back on the other side.

Q Could you see somebody outside?

A No, I could hear. And I went back to bed and it bothered me and I couldn't--and I could still hear voices and so I got up and dressed and went outside.

Q And what did you find when you went outside?

A And when I got outside I found--I just--I was maybe ten feet from the door of the trailer and Mr. Sindak was coming around the end of the trailer.

Q Okay. Now, Mrs. Bradshaw, if I direct your attention to a diagram that's behind you.

MISS SCANLAN: If I might approach the witness, Your Honor.

THE COURT: Yes, go ahead.

Q Can you look at this (indicating) diagram and familiarize yourself with it?

A Uh-huh.

Q Do you recognize what this represents?

A Uh-huh.

Q And is this a diagram of essentially where your home is located?

A Yes it is.

Q Where is your bedroom?

A The bedroom is right here (indicating),
this (indicating) is our bedroom window.

Q Okay. And how did you leave the house
when you went--this (indicating) is the
trailer, is that correct?

A Yeah. I came out through my bedroom
and went out the front entrance, right here
(indicating) and around the grounds, back here
(indicating).

Q Okay. And as you approached the
trailer from this (indicating) direction where
did you see the Defendant?

A He came around the back and was
sneaking around the corner.

Q He came around this (indicating) way?

A Uh-huh.

Q Did you know who--when you first heard
voices outside did you know who was out there?

A Did I know who?

Q Did you recognize the voice?

A I suspected, but I didn't know until I actually saw him.

Q Okay. What did you do when you went out?

A I knocked on the door of--the door--I tried the door of the trailer and the boys had it locked and I told Jeremiah to let me inside.

Q When you saw the Defendant coming around the side of the trailer, did you speak to him?

A No, I didn't.

Q Did he speak to you?

A He said, "Oh, good evening."

Q And where did he go at that point?

A He headed back down the street on Telfair toward the west.

Q Okay. Toward Jullion?

A Yeah. And I never noticed where he went from there.

Q And what did you do at that point?

A I went inside and talked to the boys.

Q Were you upset?

A Yeah. I thought it was strange.

Q Were you able to hear any of the conversation between the Defendant and the children?

A No. I heard him when he called Matt's (phonetic) name when he was round--and he called Matt (phonetic) two or three times when he was around on the side that was closest to our window.

Q Did--what did you do with the children?

A Well, I tried to talk to them first and--to see, you know, what was going on and then I told them I thought they should go inside and sleep for the rest of the night.

Q And they did that?

A Yeah.

Q Are you the custodial parent of Jeremiah Bradshaw?

A Yes I am.

Q And....

A You're talking about the parent, the actual parent, yes.

Q And you have legal custody?

A Yes.

Q Did Mr. Sindak have permission to be with your children that particular night?

A No.

Q Did he have permission to take them to his house?

A No.

Q Or anywhere?

A No.

Q Are your children--on August 18th were your children allowed in his home?

A No. My children--my son delivers that paper--his paper to him and also collects from him.

Q Which son?

A Matthew. Matthew collects from him.

A Okay. Mrs. Bradshaw, where--would you look at that (indicating) diagram again? You'll see that there's a notation that says, "six foot fence".

A Okay.

Q There's a--is there a fence approximately six foot high, a wooden fence that runs along the back.....

A Yes.

Qline of your yard?

A Uh-huh.

Q Where does the Defendant live?

A The lives right on the other side of the fence right here (indicating).

Q Thank you.

MISS SCANLAN: I have no further questions.

THE COURT: Cross-examine?

CROSS EXAMINATION

BY MR. BEER:

Q Mrs. Bradshaw, as I understand it when you walked out of the house that evening you were upset and you suspected that it was Mr. Sindak by the trailer, but you were not sure?

A Not until I saw him.

Q ...And you said nothing to Mr. Sindak when....

A No.

Q ...Mr. Sindak said, "Good evening" to you?

A Huh-uh.

Q You indicated that you had attempted to listen to what was being said at the trailer from outside of your--or while you were in your bedroom?

A Uh-huh.

Q And I believe you also indicated that you could not see who was outside, is that right?

A Uh-huh.

Q ...Wasn't there--or do you have a camper shell?

A No, some friends of ours do.

Q And on the night in question wasn't the camper shell at your house?

A Yes it was.

Q And isn't it true that the camper shell was located to the west of where the trailer is marked?

A No, it was not.

Q Can you tell me the location of the various things you had back there?

A This (indicating) is the trailer where I came out and they were staying....

Q Yes.

Athis (indicating) is the camper shell and this (indicating) is a small utility trailer that we have.

Q I see. When you were in the bedroom and you were attempting to listen to what was being said did you or your husband have any conversation regarding who it was?

A Oh, we could have. I--I don't remember exactly what was said that night. I--you know, what we have have said.

MR. BEER: No further questions, thank you.

THE COURT: Redirect?

MISS SCANLAN: Just a few questions.

REDIRECT EXAMINATION

BY MISS SCANLAN:

Q Mrs. Bradshaw, how far is your bedroom window from the trailer where the children were sleeping?

A Between ten and fifteen feet I'd say--closer to ten feet, maybe twelve feet.

Q Thank you.

MISS SCANLAN: I have no further questions.

THE COURT: Recross?

MR. BEER: No further questions.

THE COURT: Thank you, you may step down.

Next witness?

MISS SCANLAN: The State would call Jeremiah Bradshaw.

THE COURT: Do you want me to administer the oath?

MISS SCANLAN: No, but thank you.

THE COURT: Would you have--do you want the oath administered directly?

MISS SCANLAN: I think so.

THE COURT: Go ahead.

MADAM CLERK: Would you raise up your right hand?

(JEREMIAH BRADSHAW, was sworn)

MADAM CLERK: Sit down in that chair right over there (indicating).

DIRECT EXAMINATION

BY MISS SCANLAN:

- Q Will you tell me your name and spell
- your last name for us?

A My first name is Jeremiah, and my last name is Bradshaw, and it's capital

B-R-A-D-S-H-A-W.

Q Jeremiah, how old are you?

A Ten years old.

Q When's your birthday?

A March 2nd.

Q So you just turned ten?

A Yeah.

Q Where do you live?

A 3460 Jullion Street.

Q Do you have any brothers and sisters?

A Yes.

Q What are their names?

A Well, my sister's name is Roxie

(phonetic) and my bi--my big brother's name is Matt (phonetic) and my twin brother's name is Dan.

Q Where do you go to school?

A Summerwind Elementary School.

Q And that pretty close to where you
live?

A Yeah.

Q Just down Jullion?

A Uh-huh.

Q What grade are you in?

A Fourth grade.

Q Jeremiah, do you know what it means to
tell the truth?

A Yes.

Q What does it mean?

A It means to tell everything that went
on and don't tell lies and stuff.

Q Do you know what a lie is?

A Yes.

Q What's that?

A It's something that's not true.

Q Okay. Can you promise us that you're
going to tell the truth here today?

A Yes.

Q Do you remember last summer, August
18th, one night when Craig Hines (phonetic)

spent the night at your house?

A Yes.

Q Okay. Can you tell the Jury what happened that night?

A Yea. Well, me and my friend, Craig Hines (phonetic) were out in the camper and we were going to go to sleep and we were trying to stay up all night and somebody came and knocked on the window and we opened up the window and we said, "Hey, knock it off.", because we thought it was some teenager or something. And so--so--somebody was saying, "Matt (phonetic)", that's my big brother's name and--and so we said, "Matt's (phonetic) not in here", and he mentioned mat--Matt's (phonetic) name about three times and so--well, he came over and he started talking to us and he asked us who was in there and I said it was Jeremiah and Craig Hines (phonetic)--Jeremiah Bradshaw and Craig Hines (phonetic). And so he came to the window and he asked if we wanted to go over to his house and watch television and he said, "Be quiet, so your parents don't hear." And

we--and we said, no, that we couldn't go over and watch television because we didn't have our clothes on and he said, "Well, you can get them on", and we said, "We don't have them with us." So after that he asked us if we would go for a walk with him and we said, no, we couldn't do that and he said, "Well, be quiet so your parents don't hear." And he mentioned that about twice--two or three times, and he asked us if he could come--come in there and we said, "No", and he just started walking on in anyhow and we heard a knock at the door and it was my mom and she told us to let her in and so we let her in and she said, "Well, do you want to come inside the house and sleep for the right of the night?", and we did.

Q Do you know who the person was that was outside talking to you?

A It looked--it looked similar to Ed--it looked like Ed.

Q Do you know Ed?

A Yeah.

Q Okay. And Ed is the gentlemen to my left?

A Yes.

Q Does he live near you?

A Yeah, he lives right behind us.

Q Okay. Had you met him before?

A Yeah, I'd met him before.

Q Okay. Why do you think that it's Ed that was....

A Because I--I could see the--he was wearing glasses and I could tell by his voice.

Q Uh-huh. Did you ever open the door or look out a window?

A Yeah, I looked out the window, but I never opened the door till my mom got there.

Q ...How old are you, Jeremiah?

A Ten.

Q Sometime later did you talk to a Police Officer, Detective Potter?

A Yeah.

Q How did that happen?

A Well, my dad he told the Police about it and he made this little--I can't remember

what it's called, but he just went to talk to Mr. Potter one day and we talked to him and he asked us what had happened and he wrote it down, and me and Craig were there, and it wasn't when Craig moved yet.

Q Did Detective Potter talk to you and Craig at the same time?

A Well, he put us both in a room, but he asked us each questions, but we both didn't answer at the same time.

Q So, he talked to you separately, is that right?

A Yeah.

Q Did this scare you, what happened on this night?

A Yes.

Q Do you think you remember it pretty well?

A Oh, there are lots of things that I forgot but I think that I remembered it pre--really well for eight months.

Q Okay. We've talked about it; you and I, isn't that right?

A Yeah.

Q And we've talked about it with your parents?

A Yeah.

Q Have you told the Jury the truth today?

A Yeah.

Q Okay thank you.

MISS SCANLAN: I have no further questions.

THE COURT: Mr. Beer, would you like to ask Jeremiah some questions?

MR. BEER: Yes, if I may.

CROSS EXAMINATION

BY MR. BEER:

Q Jeremiah, my name is Steve Beer and I represent Mr. Sindak. Jeremiah, can I come up with you for a second and just look at the board and I want to ask you some questions? Would that be okay?

A Yeah.

MR. BEER: Is that okay, Judge?

THE COURT: Yes, go ahead.

Q This (indicating) is a--it purports to be a picture of your house right here (indicating) and do you recognize your house and this would be Jullion Street, you know, that (indicating) one?

A Yeah.

Q And Telfair?

A Yeah.

Q And then I think Mr. Sindak lives back here, right?

A (Inaudible response).

Q Okay. Just so I'm on board, you indicated that Mr. Sindak came up to the trailer and talked to you through a window, is that right?

A At the beginning he didn't, but....

Q Okay.

Ahe came around to a window.

Q Okay. Could you tell where Mr. Sindak was when he first talked to you?

A He was by this (indicating) little--big win--well, not a big window but like a screen

that's opened up and then there's was a window behind it....

Q Okay. Can....

A at the front of the trailer.

Q Okay. So, he would have been here (indicating) first?

A Yeah.

Q Where is the door to the trailer?

A At the--this (indicating) side.

Q Okay. Would--is the door then--I get confused right or left, because it depends on which way we're facing. Would the door be closest to here (indicating) or would it be on this (indicating) side?

A On this (indicating) side.

Q Okay. So, you're claiming that it would be on the west side where my pencil is?

A Yeah.

Q Okay. And when you first talked to Mr. Sindak it was at this (indicating) window?

a Yeah.

Q And when did he next turn up? When did you next talk to Mr. Sindak? Where did Mr.

Sindak go from there?

A After that he came to the window on the side of the house, it was from the other side of where the door was.

Q All right. Would it be then the side of the, that trailer that would be on the east side?

A Yeah.

Q This (indicating) way?

A (Inaudible response).

Q Okay. And was there a window on that side?

A Yeah.

Q But no door?

A No.

Q Okay. And Mr. Sindak then talked to you at that point through the window?

A Uh-huh.

Q And then where did Mr. Sindak go after that?

A Well, I just can't remember. He just stayed there and talked to us for awhile.

Q Now, did Mr. Sindak, when he was up here by this (indicating) window that would be on the south side of the trailer, did Mr. Sindak ever ask you what you guys were doing?

A I don't remember him asking us that.

Q Do you remember the first words that Mr. Sindak would have said to you?

A Yeah.

Q What were they?

A He said, "Matt (phonetic)", about three, four times and he asked us if Matt (phonetic) was in there, and we said, no, he wasn't.

Q Did Mr. Sindak ever tell you that to tell Matt (phonetic) that he had his lawn mowing money?

A No, he just called at about 10:30.

Q So, there was never any conversation about coming over to his house to get the lawn mowing money?

A No.

Q Did Mr. Sindak ever come to the door of the trailer?

A He was starting to but he met my mom and so my mom came to the door instead of him and he just started to walk down the sidewalk.

Q Did you ever go over the next day with Matt (phonetic) to help him get the lawn mowing money?

A The next day I don't remember what happened but I did before.

Q Did you talk with your parents about what had happened and what was said the minute you got into the house when your mom took you back into the house?

A What do you mean?

Q Well, did you tell them that Mr. Sindak had come up to the trailer and asked you to go over to his house to watch TV?

A Yeah.

Q Okay. So you told them just that very evening?

A Yeah.

Q Do you remember what you and Craig were talking about just before Mr. Sindak yelled, "Matt" (phonetic)?

A No, I don't remember.

Q Do you recall anything that the two of you guys talked about; you and Craig?

A Well, we didn't really talk about anything. We weren't in a conversation we were just telling a few jokes.

Q So you'd been telling some jokes?

A Yeah.

Q Do you remember the jokes you told?

A No, not really.

Q Were you two going to stay up all night?

A We were going to try.

Q And it was about, what 11:00, 12:00 that night that Mr. Sindak came up?

A Uh-huh.

Q Okay. You talked to both your mother and father after you got back in from the trailer that evening and then did you talked (sic) about it again the next day?

A Well, I think I talked to Mr. Murray about it, and he's a Policeman that lives

behinds us and me and him and my dad got into a little conversation.

A And so you told them what had happened again and before you came here today did you have an opportunity to talk with Ms. Scanlan or the Prosecuting Attorney?

A Yes.

Q And then were your parents there at the time?

A Yeah.

QDid you ever tell Officer Potter that the first time you noticed anything was when Mr. Sindak knocked on the door?

A yeah.

Q Now, you indicated that he was attempting to come to the door but that he hadn't reached it today at least....

A Yeah, I told her.

Q Okay. At least when you talked to Officer Potter after this happened you said that he knocked on the door, is that right?

A No, Ed didn't, but my mother did come in.

Q When you heard the knocking on the door, whether it was from your mother or from Mr. Sindak, do you recall what you said?

A Well, my mom said, "Craig and Dad--Jeremiah, let me in because I'm going to take you in the house."

Q Do you ever recall yelling, "Knock it off"?

A Yeah.

Q Is that when you said, "Knock it off", when you mom was knocking on the door?

A No, I heard it when somebody had knocked on the door and I thought it was teenagers in the beginning.

Q Okay.Has Mr. Sindak ever gotten after you and your brothers for climbing the fence to get to the cherry tree?

A Yeah.

MR. BEER: I have no further questions.
Thank you, Jeremiah.

REDIRECT EXAMINATION

BY MISS SCANLAN:

Q Jeremiah, how many times on that night did somebody knock on the door of the trailer?

A Twice.

Q Okay. Tell me when that took place?

Q At the beginning somebody knocked on the door and I didn't know who it was, I guess it was Ed, and at the end my mother knocked on the door to ask us to come in the house.

Q Okay. At the beginning when someone knocked on the door and you think it was probably Ed, was that person saying anything?

A She was saying, "Matt" (phonetic) -- he was saying, "Matt" (phonetic).

Q Okay. So that was when somebody was calling Matt's (phonetic) name, is that right?

A (Inaudible response).

Q ...Jeremiah, has anybody told you what to say here today?

A No, but my mother and father they went over it with me and asked me what happened a few times.

Q Okay. Did anybody tell you that you should say certain things?

A No.

Q Did people tell you that you should just say--tell the truth?

A Yeah.

Q And did I tell you that if you didn't know the answer to a question that you should say you didn't know?

A Yeah.

Q All right. (Indiscernible) that you say you don't remember

A Yeah.

Qand just to tell the truth....

A Uh-huh.

Qas best you remember?

A Uh-huh.

Q Is that what you did today?

A Yeah.

Q Thanks.

MISS SCANLAN: No other questions.

RE-CROSS EXAMINATION

BY MR. BEER:

Q At the time that this occurred that evening can you tell me how long before you first saw Mr. Sindak, how long it was be--from the time you first saw Mr. Sindak to the time that he left and your mom knocked on the door?

A It was about ten to fifteen minutes.

Q So we have--Mr. Sindak you first see him through the window at the front of the trailer and then....

A I didn't see him through the window the seal was down; the part that opens.

MR. BEER: Your Honor, may I approach the

.....

THE COURT: Yes.

MR. BEER:chart again?

Q I thought that you said that you had seen him through the window that would be to the south side of the trailer?

A I didn't see him through the window I just know that he was there, because I could hear the voice coming from there.

Q And the first time you saw him was on this (indicating) side of the trailer through the window?

A No, that was the second time.

Q Okay. And can you tell me the first time again as to where he was?

A It was on the south side of the trailer up at the big window.

Q Okay. But, did you just say that you couldn't see him through this window?

A Well, I didn't see him because there was a little plastic thing that goes over the window that you have to lift up in order to see through the window; it was down.

Q All right.

A I just heard his voice coming from there.

Q Okay. So when he was right here (indicating) you could just hear his voice?

A Yeah.

Q And then the first time you saw him it would have been on this (indicating) side of the trailer at the window?

A Yeah.

Q And do you recall a knock on this

(indicating) door on this (indicating) side
before you heard Mr. Sindak at this
(indicating) window?

A Yes.

Q And from the time that you heard the
knock on this (indicating) door to the time
that you heard Mr. Sindak at this (indicating)
window how many minutes had elapsed?

A Well, about one--one minute.

Q Okay. So he had about one minute from
here (indicating) to here (indicating) and then
when you heard Mr. Sindak, was this where he
was saying, "Matt (phonetic), Matt (phonetic)"?

A Yeah.

Q Okay. And then from the time that you
heard that but you couldn't see Mr. Sindak to
the time that you saw him through this
(indicating) window how many minutes had
elapsed?

A Well, it wasn't really minutes, it was
about thirty to forty seconds.

Q And then, at this point was this when Mr. Sindak just walked out and said, "Do you want to watch television at my house"?

A Yeah.

Q And then I guess he asked you to, who was in the trailer?

A Yeah.

Q Did he ever ask you about Daniel?

A Yeah, he asked me where he was and I said he was inside the house because he was sick.

Q And how long do you think this conversation took when Mr. Sindak was just talking to you through the window?

A About eight--seven or eight minutes.

Q And you've told us everything that was said during that time period as far as what you recall?

A Yeah.

Q Okay. So we have about seven or eight minutes and then how long was it after that conversation lasted; seven or eight minutes, to

the time that you heard your mom knock on the door?

A About two--two or three minutes.

Q Did you know during that time period where Mr. Sindak was?

A Huh-uh.

MR. BEER: No Further questions, thank you, Jeremiah.

THE COURT: Redirect?

MISS SCANLAN: No, Your Honor, thank you.

THE COURT: Thank you, Jeremiah, you can go back out now.

WITNESS BRADSHAW: Okay.

THE COURT: Okay.

MISS SCANLAN: The State would call Keith Potter.

(KEITH POTTER, was sworn)

DIRECT EXAMINATION

BY MISS SCANLAN:

Q Will you state your name and spell your last name for the record, please?

A Keith D. Potter, P-O-T-T-E-R.

Q Are you employed, Mr. Potter?

A Yes I am.

Q What do you do?

A I am a School Resource Officer for the
Boise Police Department.

Q Do you work in a particular school?

A I have fifteen grade schools below the
bench area.

Q How were you employed on August 20,
1985?

A Since school was out we were working
just as a--basically as a Juvenile Detective,
taking all--all the juvenile cases.

Q All right. Do you recall meeting
Jeremiah Bradshaw and Craig Hines (phonetic) on
August 20th of 1985?

A Somewhat, yes.

Q And where did that meeting take place?

A I believe it took place at the Police
Station. The parents brought the boys there.

Q Okay. Did you interview the boys
separately?

A Yes, I did.

Q Did you ask them about--did they explain to you about an incident that had occurred at their home--at the home of the Bradshaw's (sic)?

A Yes.

Q Did the two boys tell you essentially the same story?

A Yes they did.

Q You wrote a police report then that was forwarded to our office, the City Attorney's Office?

A That's correct.

Q And have you had any other real involvement in this case beyond your interviews with the victims?

A No, that's basically the major involvement.

Q Thank you.

MISS SCANLAN: I have no other questions.

THE COURT: Cross examine.

MR. BEER: Yes.

CROSS EXAMINATION

BY MR. BEER:

Q Officer Potter, did Jeremiah and Craig tell you that they had first heard a knock on the trailer door?

A I have my report here, may I refer to it?

Q Certainly.

A ...As I read the report apparently there was a knock on the trailer door, yes.

Q In the--well, did the boys tell you that they had ever been asked to come over to get paid for their lawn mowing jobs?

A ...I don't recall. I know that according to my report I talked to the father about that type of subject but I can't recall that the boys ever said whether he invited them over to get paid or not.

Q In the Complaint that was filed in this case there was an allegation that Mr.

Sindak--Sindak had asked the children to come over to his house to watch television and get paid for some yard work without the parent's

permission, do you know where that particular wording in the Complaint came from?

A ...According to my report the Defendant had called earlier to the father requesting that the boys come over and be paid for their yard job, and then as I read this he asked the boys to come over and watch television with him when he was over next to the trailer.

Q Your report indicates that it was taken approximately at 10:00 on August 20th?

A Yes.

MR. BEER: No further questions, thank you, Officer.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MISS SCANLAN:

Q Officer Potter, you did not initiate an action against the Defendant yourself, did you?

A No I did not.

Q That was sent through the City Attorney's Office, is that right?

A That's correct.

Q The Complaint was drafted in our office?

A Yes.

MISS SCANLAN: I have no other questions.

THE COURT: Recross?

MR. BEER: Nothing further.

THE COURT: Thank you, Officer, you may step down. Next witness?

MISS SCANLAN: The State would rest at this point, Your Honor.

THE COURT: All right. Members of the Jury, I'd like to take a recess of about ten to fifteen minutes and then we'll return for the Defendant's opening statement and their evidence. Thank you. I'd like you to retire to the Jury Room, but before you do that I would ask Mr. Beer if you would assist the Prosecutor to move our roadblock there. Thank you. Court is in recess.

MADAM CLERK: All rise.

(Court off record)

(Court on record)

THE COURT: Thank you. Please be seated.
And does the State wish to raise something with
me before we take the recess.

MISS SCANLAN: I just would request that
my witnesses be excused.

MR. BEER: I have no problem if you do
that.

MISS SCANLAN: Fine.

THE COURT: All right. You're welcome to
release your witnesses then. Anything else
before we recess?

MR. BEER: Your Honor, I have prepared a
Motion to Dismiss, which I will give to the
Court and it covers the areas that I think
we've already talked bout. May I approach the
Bench?

THE COURT: Yes.

MR. BEER: I've already provided this to
Miss Scanlan.

THE COURT: I'd like to just take a pause
on the record.

(Court off record)

(Court on record) -

THE COURT: I have read your Motion to Dismiss, Mr. Beer, does the State wish to respond to it?

MISS SCANLAN: Your Honor, I would--the only (indiscernible) meaning of the word "home" encompasses a place where one resides. I believe that's anywhere within the curtilage and I think that this clearly is a place within a curtilage of the property and it's a place where these people reside, and I think it certainly falls within the meaning of "home". A home is different than the word "house", and the statute particularly sends home that (indiscernible). In terms of whether or not the statute requires some particular intent, I think that this is a statute of general intent. There is no specific intent and I don't think there's any reason that there needs to be a specific intent.

THE COURT: Mr. Beer, do you wish to speak further to your motion beyond that which you're (sic) already argued here in the motion or earlier on your pre-trial motion?

MR. BEER: Only one additional point. I don't think there's been any proof that the crime, if committed, was committed in Ada County.

THE COURT: All right.

MR. BEER: I don't recall that testimony, Your Honor, but if the Court does, I

THE COURT: Okay. Well, the Plaintiff's first witness, Mr. Bradshaw, indicated that he described his--he first said he lived in Boise City and then gave the address, I believe that's sufficient. Well, the Motion to Dismiss is denied and the Clerk is directed to file your Motion to Dismiss in the case to make it a matter of record. All right. Anything else before I take a recess?

MR. BEER: No, Judge.

MISS SCANLAN: No.

THE COURT: Okay. Thank you.

(Court off record)

(Court on record)

THE COURT: Continuing with State vs. Sindak; the Jury remains in the Jury Room, the

parties are back before the Court as before.
Does the State have anything to raise with me
before the Jury is recalled.

MISS SCANLAN: No, Your Honor.

THE COURT: Does the Defense?

MR. BEER: No, Your Honor.

THE COURT: I have nothing so I would ask
that the Clerk return the Jury and we'll take
up your witness, of course, preceded by your
opening statement.

MADAM CLERK: All rise.

(Court off record)

(Court on record)

THE COURT: Thank you, please be seated.
The Jury is back, the parties continue to be
present. Members of the Jury, we will now
begin the Defense, and before Mr. Beer calls
and witnesses he would like now to make his
opening statement to you. Mr. Beer?

MR. BEER: Ladies and gentlemen of the
Jury, Judge Schmidt, Counsel; when I talked to
you earlier this morning, when we were
selecting a Jury I asked that you keep an open

mind because what we have heard so far is the State's case and it is at this time that we are here to hear what the Defendant has to say. The Defendant has pled not guilty to this charge and that's a legal way of saying, "I didn't do it", and I think that that is very important and the reason that we are here for a trial today is because the Defendant said, "I didn't do it", and if we had every case in Ada County....

(Court off record to change tape)

(Court on record)

MR. BEER:tried actually tried we'd probably close down the Courts in a matter of days. So it's very important that you remember that the Defendant has said, "Not guilt(sic), I didn't do it." The purpose of the opening statement is to give you a birds' eye view of where we are going with the evidence. The Defendant in this case does not need to take the stand. He has said really all that he needs to say and that is, "I didn't do it", so we could stop at this point. We're not going

to do it because I think that you could have some questions as to why the Defendant didn't take the stand so the Defendant is going to take the stand and there are a few things that we don't need to worry about and you don't need to resolve, because during the night in question, first of all, he did call Mr. Bradshaw and he asked if Matt (phonetic) was around and the purpose of that call was to pay Matt (phonetic) for the law mowing that he had done. So, we don't disagree with Mr. Bradshaw's testimony as to that. We disagree with perhaps the length of the conversation and what was said during the conversation but basically we don't have any qualm with that. I also don't have any qualm that Mr. Sindak talked to Jeremiah and to Craig Hines (phonetic) that evening, and we don't have a qualm that it was about 11:00 or 12:00. Mr. Sindak's going to tell you that that night he had been doing some yard work and the he made the call to Mr. Bradshaw and then he went out and cleaned up and that decided he'd take a

little walk. And so he walked and he walked by the trailer and he heard some noise, and he couldn't figure out what it was and so he went up to the trailer, and he said to Matt--or, "Is that you?", and that is when Jeremiah came to the window and said, "No", and he said, "Matt's (phonetic) in the house", and Jeremiah said that he was there and that Craig was there; the other little boy. The conversation did not go as Jeremiah says. Mr. Sindak's going to tell you that, yes, he talked to them, he said, you know, "What are doing (sic)?" They said that they were sleeping out. He said that that was, you know, good. He never asked them over to watch television. He did say, "Would you please remind Matt (phonetic) that I've got his money for lawn mowing," and that was it. The conversation took about two or three minutes, and at no time was Mr. Sindak ever on the side of the trailer with the door. The only conversations that he had were when he was walking on the sidewalk and through the south side, I believe, of the trailer. He said,

"Matt (phonetic), is that you?", and then he went around to the side of the trailer, but it was the side opposite the door. The testimony in this case is going to boil down to credibility, and that is the credibility of Mr. Sindak and the credibility of Jeremiah. And, we're not inferring by that statement that anybody is lying, but simply, everyone is trying to recall exactly what happened, but the testimony that you're going to hear today is vastly different than what you have been introduced to by the State. Thank you very much, Ladies and Gentlemen.

THE COURT: Go right ahead.

MR. BEER: I call Mr. Sindak, if I may.

(EDWARD P. SINDAK, was sworn)

DIRECT EXAMINATION

BY MR. BEER:

Q Mr. Sindak, would you state your name please?

A Edward Sindak.

Q And what is your address?

A 3459 Payne Place.

Q Mr. Sindak, in view of the time and we need to hurry though this I'm going to go directly to August 18, 1985. You previously have heard the testimony of Mr. and Mrs. Bradshaw and also Jeremiah, did you call Mr. Bradshaw that evening?

A Yes I did.

Q And Mr. Bradshaw said it was about 10:30, is that approximately correct?

A That's correct, yes.

Q Can you tell me what you talked about with Mr. Bradshaw?

A I was more interested in getting Matt (phonetic) his money for doing the yard work and basically we visit once in awhile over the phone regarding his health and the kids and so forth.

Q Mr. Bradshaw indicated that that conversation took approximately five to ten minutes, do you recall talking that length of time?

A Usually I don't talk that long on the telephone so I'd--you know, I'd say not that long.

Q Do you have an approximation of how long you talked to him?

A Oh, more like three minutes perhaps.

Q Did you have a conversation with the--Jeremiah later that evening?

A Yes.

Q What--well, first of all, tell me where the conversation took place?

A Well, it was there at the trailer. I didn't know which boy it was. I can't tell the twins apart anyway, but it was dark, I couldn't see who was in the trailer, but, yes we did have a.....

Q What were you.....

Aconversation?

Qdoing when you went to the trailer?

A I was out for my evening walk; actually just going down the sidewalk and I heard this runkus (sic) coming from the trailer area so I

just stopped for a minute and then I called out for Matt (phonetic) figuring they were just horsing around there in the trailer, or whatever was going on, I didn't know. I called out again, nobody answered, so I walked down between the trailer and I believe the chart had the trailer moved toward the center of the slab; the camper shell itself was on this (indicating) side of the trailer as I recall it.

Q If I can have you show the Jury; but first of all, where you were walking, in which direction?

A There is a corner here (indicating) and I live in the house on the corner and there is a street here (indicating), which is Payne Place. I normally just come out the front door and walk down the sidewalk. The picture doesn't indicate any sidewalk here (indicating) to here (indicating), however there is a walkway or a sidewalk, and I was walking down here (indicating) when I heard the noise and I stopped here (indicating) and went down between

the trailer and the utility trailer and I could hear the kids talking then; that's when somebody said, "Knock it off", and then I stopped and listened at the window and I inquired who was in there and what they were doing and at that time we just visited momentarily and I just reminded whoever it was in the trailer that I got Matt's (phonetic) money over at the house and he can come and get it anytime and I proceeded on out back to the sidewalk, around the tongue of the trailer, which sticks up in the roadway, more or less, and that's when I walked out in front and confronted Mrs. Bradshaw who was standing right here (indicating) on the lawn. I said, "Good evening" and continued on my merry way for my evening walk. It was fairly hot that evening and

Q At anytime during the conversation you had with Jeremiah and Craig; the people in the trailer--the children in the trailer, did you ever ask them to come over to your house to watch television?

A No, I did not.

Q Did you ever ask them to come over to your house at all?

A Not that night, no.

Q Did you ever ask them if you could come into the trailer?

A No I did not.

Q Did you ever ask them to leave the trailer to go someplace other than your house?

A No, I had no reason to.

Q Okay. Did Matt (phonetic) come over the next day to collect the money?

A Yes he did.

MR. BEER: No further questions, thank you.

THE COURT: Cross examine?

MISS SCANLAN: I have no questions, Your Honor, thank you.

THE COURT: You may step down, Mr. Sindak, thank you.

WITNESS SINDAK: Thank you, Your Honor.

MR. BEER: The Defense rests.

THE COURT: Does the State wish to offer any rebuttal evidence?

MISS SCANLAN: No, Your Honor.

THE COURT: Members of the Jury, both sides have rested. I have one final set of instructions to give to you. It is at this point of the trial, now that I've heard all of the evidence, that I know what to put in this set of instructions. It will take me a few minutes to get them organized and I am required to submit them to the Attorneys to give them an opportunity to respond to them before I present them to you. If you'd please retire to the Jury Room once again I will assemble these instructions now, review them and present them to you as directly as possible. And again, Mr. Beer, if you could assist with our chart there I would--we can make the Jury Room available now. Thank you and I'll have you back as soon as we have arranged those instructions.

MADAM CLERK: All rise.

(Court off record)

(Court on record)

THE COURT: Continuing with State vs. Sindak. The Jury remains outside of the courtroom and the parties have been given the Court's Proposed Final Instructions, which numerically begin with No. 9. Has the State read the Proposed Final Instructions?

MISS SCANLAN: Yes, I have, Your Honor.

THE COURT: Do you have any objections to any of them?

MISS SCANLAN: No I don't.

THE COURT: Mr. Beer, has the Defense read the Proposed Final Instructions?

MR. BEER: Yes, Your Honor, we have.

THE COURT: Do you have any objections to any of them?

MR. BEER: We do have an objection as to Instruction No. 9, I don't think that's a correct statement of the law. The statute in question refers to the term "home" and yet this instruction seems to be dealing with buildings and other shelters, whether permanent or mobile. And then it says, "Not connected to the dwelling but located close to it." I think

that any definition that I've seen it would still have to be on the same property. In other words, you can't burglarize a shed that is on somebody else's property, and you claim that that's close enough to it, so I.....

THE COURT: Do you think within the framework of the evidence presented in this case and taken only in light of this case though that this is exactly what we're talking about? There's no dispute in this case about where the trailer was in terms of whose property it was.

MR. BEER: Well, there is sort of a dispute because the tongue of it was out on the public right-of-way. The public right-of-way goes in for twenty feet, so--however, that's not particularly in point. It's just that I don't think that instruction should be given.

THE COURT: State wish to respond on Instruction 9?

MISS SCANLAN: No, Your Honor.

THE COURT: Well, let's see. ...Perhaps this, "It is the law in the State of Idaho that buildings and other shelters, whether permanent

or mobile, not connected to a dwelling but upon the same property and located close to it and used in conjunction with it take on the attributes of the dwelling and are considered a part of it." I think that answers the property line issue. And I believe you had some other objections about the instruction not really referring to the language of the statute, that is the word "home"?

MR. BEER: That is correct.

THE COURT: I believe that I view the word "home" and "dwelling" as synonymous in this instruction.

MR. BEER: That--I would disagree with that, but I don't think that I'm probably going to succeed in getting you to change your mind so I'd just enter an objection to the entire instruction.

THE COURT: . . . Okay. As modified then with the property line correction that the instruction will remain. Any other objections to any other instructions?

MR. BEER: . . . No, I'm sorry.

THE COURT: On Instruction 10, do we need this instruction?

MISS SCANLAN: I didn't know what exactly it was referring to.

THE COURT: This refers to the business of circumstantial evidence.

MR. BEER: Judge, I don't think its applicable.

THE COURT: This is the instruction that begins, "Where the witnesses on the Defendant on..."--oh, I'm sorry, I don't mean 10. 10, yeah, this is a--this is where--I give this were a Defendant testifies about making an admission against his interest. It's a technical thing, particularly, in this case. I think you'll all agree that Mr. Sindak took the witness stand and he admitted that he was at the trailer. He admitted engaging in conversation. And these are all technically facts against his interest because he admitted to being there and that's part of the State's burden of proof, to show that he was there doing these things, and engaging in the

conversation. And although there's a dispute about the contents of the conversation by Mr. Sindak's own admission, he puts himself right at the trailer and there are parts of his testimony that are exactly consistent with those of the parents and the child. And so, in a way, those are statements against his interest to that extent, and so I felt it was necessary for me to give that. I don't know if this is just one of those instructions that instructs the Jury too much or not. Maybe it's really not needed. Does the State think that No. 10 is needed?

MISS SCANLAN: No, Your Honor.

THE COURT: Do you, Mr. Beer?

MR. BEER: No.

THE COURT: I'd just as soon not have it, but I offer it. All right. And then the next one, which would be 11, if they were numbered, but it's the third one in the pile, "Where the case of the State rests substantially or entirely on circumstantial evidence and thereafter", what do you think of that

instruction? Does the State feel I should give this instruction or do you have any feelings about it at all?

MISS SCANLAN: I don't think that it's necessary.

THE COURT: Mr. Beer, what do you think?

MR. BEER: Judge, I would like to have 11.

THE COURT: Okay. It will remain. I believe this is the instruction that is of such hot debate amongst some of the Judges. Okay. And I believe you said that--so that actually becomes 10. Okay. There's a total of 14 instructions. Now, as to the one instruction that I--I withdrew here with your acquiescence, I'm going to put on the bottom of this, "Offered by Court" so in case there's an appeal the Appellate Court could at least know what we're talking about. And that will remain part of the record. All right. Does the State have anything to take up with me outside the presence of the Jury before we proceed with the Final Instructions?

MISS SCANLAN: No, Your Honor.

THE COURT: Does the Defense?

MR. BEER: Judge, how long do you wish

Counsel to argue?

THE COURT: A total of fifteen minutes

each side, meaning if the State wishes to speak twice the total of the two must be within fifteen minutes.

MR. BEER: Will you signal at such and such a time?

THE COURT: Only if you request it.

Generally, I let the clock go and I'll warn you at one minute.

MR. BEER: That's fine.

THE COURT: Anything else. Okay. Nothing further appearing then, I--do you need to speak with the Prosecutor, ma'am, before I recall the Jury?

UNIDENTIFIED VOICE: No, I'm here to hear the argument (indiscernible)....

THE COURT: Okay. The Clerk will recall the Jury then please.

(Pause)

THE COURT: Thank you, please be seated.

The Jury has returned, is present and accounted for; the parties continue to be present. Members of the Jury, I give to you now your Final Instructions. They begin with No. 9 and go through 14.

(Final Instructions recorded, but not transcribed)

(Closing Statements recorded, but not transcribed)

(Other portions recorded, but not transcribed).

THE COURT: Does the Defense?

CERTIFICATE OF PARTIAL TRANSCRIPT

The undersigned does hereby certify that
she correctly and accurately transcribed and
typed the above partial transcript from the
recording of STATE OF IDAHO vs. EDWARD P.
SINDAK, JURY TRIAL, which was recorded APRIL
24, 1986, in the above entitled action.

Dated and certified this 26th day of
August, 1986.

/s/ Gail Lee Christensen